

United States  
Circuit Court of Appeals

For the Ninth Circuit.

16

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EWA PLANTATION COMPANY, a Hawaiian  
Corporation,

Plaintiff in Error,

vs.

CHARLES T. WILDER, as Tax Assessor for the  
First Taxation Division, Territory of Hawaii,  
Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the Supreme Court of the  
Territory of Hawaii.

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**FILED**  
**JUL 8 - 1922**  
**F. D. MONCKTON,**  
**CLERK,**



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ORIGINAL.

In the Supreme Court of the Territory of Hawaii.  
October, 1920, Term.

No.—.

EWA PLANTATION COMPANY

vs.

CHARLES T. WILDER, Tax Assessor for the  
First Taxation Division, Territory of  
Hawaii.

**Statement of Agreed Facts.**

**SUBMISSION WITHOUT ACTION.**

The undersigned, Ewa Plantation Company, a Hawaiian corporation, and Charles T. Wilder, as Tax Assessor for the First Taxation Division, Territory of Hawaii, being parties to questions of difference which might be the subject of a civil action in the Tax Appeal Court of said Territory, have agreed upon the following statement of facts upon which the controversy depends, viz:

(1) That on the 28th day of February, 1921, the said Ewa Plantation Company duly filed with the said Tax Assessor its income tax return for the year 1921, in manner and form required by law, a copy whereof marked Exhibit "A" is hereto attached and made a part hereof, whereby it appears that the said Company claims that its net income for the year amounted to \$3,913,638.03 upon which there would be payable income taxes amounting to \$156,545.52.

(2) That included in item (19) of Schedule "A" of said return is an item designated "Strike Claim Settlement \$2,324,931.75," which said Tax Assessor has increased to \$2,791,697.72. That the facts and circumstances relating to [1\*] this point are as follows:

That on or about January 19th, 1920, the Filipino laborers of seven sugar plantations on the Island of Oahu, including Ewa Plantation, went out on strike and there followed on or about the 1st day of February, 1920, a strike of the Japanese laborers on the same plantation; that said laborers comprised almost the entire field and mill forces of said Company, and it became necessary in order to carry on the plantation to employ strike-breakers and other laborers at large expense. That on or about the 19th day of February, 1920, the Filipinos called off the strike so far as they were concerned, and the laborers of that nationality resumed their work; that the Japanese laborers continued their strike until July, 1920; that the basic wage schedule of the sugar plantations in the Territory of Hawaii is established through the recommendation of the Hawaiian Sugar Planters Association, an organization comprising practically every sugar plantation and mill company in the said Territory, including said Ewa Plantation Company, and individuals directly interested in the production of sugar; that said Japanese strikers and their families were maintained by the Japanese planta-

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\*Page-number appearing at foot of page of original certified Transcript of Record.

tion laborers on the islands of said Territory other than said Island of Oahu, and since all said plantation and mill companies were vitally affected by the outcome of the said strikes said companies decided that the strikes should be handled through and by said Association, and that the expense connected therewith should be borne *pro rata* by the several plantation members of said Association; that the demands of both the Filipino and the Japanese labor organizations, including a demand for an increase of wages, were presented to, and rejected by, the said Association; that it was also decided [2] by appropriate resolutions adopted both by the Hawaiian Sugar Planters Association and each plantation company member, to underwrite all losses incurred by plantations on which the strikes occurred by reason of their resistance of the strikes; that the losses underwritten were later definitely limited to those chargeable to the 1920, 1921 and 1922 crops, and to net losses to other property such as damage to buildings, etc., the amount to be determined by the decrease estimated in taxable net profits arising from or due to the disturbed labor conditions prevailing between January 19th, 1920, and September 30, 1920, inclusive. It was further decided by said Association and the members thereof that all claims should be settled in full, the sugar losses and settlement price of sugar being mutually agreed to by both the paying and the receiving plantations; that it was further agreed that the *pro rata* basis of settlement would be the average tonnage output of

each plantation-member of the Association for the years 1917-1918 and 1919; that the cost of the strikes to the Hawaiian Sugar Planters Association was as follows:

Strike expenses incurred by the Association .....	\$ 635,959.42
Plantation strike losses under-written ... ..	11,483,357.88
	<hr/>
	\$12,119,317.30

That each plantation-member of said Association, including said Ewa Plantation company, paid its *pro rata* of said \$12,119,317.30 on or before December 31st, 1920, and the plantations which suffered losses on account of said strike received \$11,483,357.88 on that date; that said Ewa Plantation Company received in full settlement of its said strike losses and its claim to reimbursement thereof the sum of \$2,791,697.72, this amount being made up of estimated losses in taxable profits; [3] For the crop of 1920 amounting to \$2,324,931.75; For the crop of 1921 amounting to 133,706.29; and For the crop of 1922 amounting to 333,059.68.

That the said Ewa Plantation Company paid as its *pro rata* share of the said gross loss the sum of \$721,818.95 and deducted that entire amount from its income for the year 1920, as shown by said Exhibit "A"; that all other plantations contributed their *pro rata* of said gross loss deducted the entire amount of such contributions or payments from their income tax returns for the 1920 income tax period; that the income tax return of

the said Ewa Plantation Company includes the sum of \$2,324,931.75 only as income for the year 1920.

Upon these facts it is the contention of the Company that the other two amounts, namely; \$133,706.29 and \$333,059.68 were received on account of losses of taxable profits of the crops of 1921 and 1922, respectively, and should be returned as income for those respective years and are therefor not to be included in its 1920 return.

And upon the same facts it is the contention of the said assessor that since the money was actually received during the 1920 taxation period, whether it be regarded as an advance realization of the 1921 and 1922 crops or otherwise, it should be returned as income accruing during the 1920 taxation period.

(3) That the said contention of said company is based upon the facts that prior to the year 1906 the taxable income of the Company was annually determined by ascertaining the difference between the gross income and the disbursements for operating and other expenses during the year, but since the ruling made by this court in the case of *Tax Assessor vs. Laupahoehoe Sugar Company*, 18 Haw. 206, the sugar plantation companies, including said Ewa Plantation Company, consistently have computed [4] their taxable income on what has been termed the crop basis rather than an annual basis, that is to say; instead of deducting the said disbursements from the said gross income the said Company has deducted the amounts expended or to be expended in the production and marketing of the crop harvested during the taxation period, from the

proceeds of sales; and that similarly gross income has been returned on the basis of the current crop and not on receipts from sales during the taxation period, and that by this system the receipts from the sale of the sugar of the crop of the taxation period are returned as the income of the taxation period whether such sugar were actually sold within the preceding year or not. That the said "strike losses" received by said Company for the crops of 1921 and 1922 were the estimated net losses in taxable profits on those crops due to the strikes; that net losses in taxable profits were ascertained by taking into account the estimated value of sugar lost through improper or insufficient cultivation due to the strikes, the estimated additional amount which would have been required in the production and marketing of said sugar, and the estimated increase or decrease in all other expenditures on said crops due to the strikes.

In case the contention of said assessor should be sustained on this point, the amount of income taxes payable by the said Company should be increased by the sum of \$18,670.60 over the amount shown by the Company's said return.

(4) That said assessor has disallowed a certain deduction claimed in Schedule "B" of said return, namely, item "(2) Interest on Mainland and Foreign Investments," the sum of \$52,442.23, being the aggregate sum received by said Company as interest upon the bonds and notes of foreign (mainland) railroad and industrial corporations,

and interest upon deposits in mainland [5] banks, a schedule whereof marked Exhibit "B" is hereto attached and made part hereof; that the facts in this connection are that ever since the incorporation of said Ewa Plantation Company, Castle & Cooke, Limited, a Hawaiian corporation, has been the general agent at Honolulu of said Ewa Plantation Company, and during upwards of twenty years last past Welch & Company, a California corporation having offices in California and New York, has been the agent at San Francisco of said Castle & Cooke, Limited; that at all times during said period the sugar produced by said Ewa Plantation Company has been sold on the Mainland of the United States and the proceeds of sale have been received by said Welch & Company, deposited in California banks, and credited on its books to Castle & Cooke, Limited, for account of said Ewa Plantation Company against which said credit said Ewa Plantation Company has drawn from time to time as needed moneys required by it for the payment of the expenses of its plantation and dividends upon its stock; that all said bonds and notes were purchased by said Welch & Company for the account of said Ewa Plantation Company with surplus moneys of the latter so held as aforesaid by the former company, and the said bonds and notes thereafter, until they were sold on the Mainland, remained on deposit with said Welch & Company and none of said bonds and notes, or the proceeds with which they were purchased, have been held in said Territory, nor have they been

physically present therein at any time; that at no time heretofore has the said assessor, or his predecessors in office, considered income derived from such investments as taxable income, or included such in assessing the incomes of corporations or individuals under the laws of said Territory. [6]

Upon these facts it is the contention of said Company that the interest accruing from said bonds, notes and bank deposits was not taxable as income derived from property owned, or business carried on in said Territory, or otherwise under the laws of said Territory.

Upon the same facts it is the contention of said assessor that said interest upon said bonds, notes and bank deposits was and is taxable income of said Company.

In case the contention of said assessor on this point should be sustained, the amount of income taxes payable by said Company would be increased by the sum of \$2,097.68 over the amount shown by the Company's said return.

(5) That said Assessor has disallowed a certain deduction claimed in Schedule "B" of said return, namely, item "15-(c) Loss on Sale Sugar Factors Stock" in the sum of \$289,680.00. The facts with regard to the purchase, ownership and sale of this stock are as follows:

Said Sugar Factors Company, Limited, owned 87% of the capital stock of the California and Hawaiian Sugar Refining Company, a California corporation, which during recent years had purchased and refined a large proportion of the

Hawaiian raw sugar. The stock of said Sugar Factors Company was offered to and purchased by plantations and persons engaged in the sugar industry in Hawaii at its par value of \$100.00 per share; and the ownership of said stock by said plantations and persons entitled them to sell a certain proportion of their sugar to said Refining Company, and they so sold to the same all of the sugar produced by them during the year 1920. Ewa Plantation Company purchased 4,828 shares of the stock of said Sugar Factors Company at its par value during the years 1904-1917, and said stock [7] owing to accumulated surplus earnings of the said Refining Company, had, on the basis of book values, an estimated value of over \$240.00 per share at the end of the year 1919, but said stock has never been offered for sale in the open market and has never had any open or stock market quotation value.

Up to the middle of the year 1920 said Refining Company had apparently earned a considerable profit from its business of the earlier months of that year, but shortly thereafter a break occurred in the sugar market which resulted in the inability of said Refining Company to sell its sugar, while at the same time it had on hand large supplies of high cost sugars including foreign purchases, and was under contractual obligations to continue to purchase sugar from the Hawaiian planters. In consequence, by the 1st of December, 1920, it became apparent that said Refining Company would suffer a loss of approximately \$13,000,000.00,

which would wipe out not only its accumulated surplus but also part of its capital, and place it in a precarious financial condition.

In order that said Refining Company might continue in business it became necessary for its stockholders to arrange for additional capital and as its principal stockholder was said Sugar Factors Company, which was substantially a holding company, the principal asset of which was its stock in said Refining Company, the burden of arranging for said additional capital fell upon the stockholders of said Sugar Factors Company.

In order to effect such arrangements, said Sugar Factors Company, as a preliminary step, purchased the remainder of the stock of said Refining Company and thereby obtained complete control of said Refining Company, and it was then decided that either additional capital should be provided for said Refining [8] Company or that a new corporation should be organized to take over the assets and liabilities of said Refining Company. In order to assist the stockholders of said Sugar Factors Company to carry out either of these plans and to meet the heavy financial obligations devolving upon said stockholders, their agents offered to buy their stock in said Sugar Factors Company at its appraised value, which was found to be \$40.00 per share, and practically all of said stockholders, including Ewa Plantation Company, accepted such offers, and Ewa Plantation Company thereupon in December, 1920, sold its said stock in said Sugar Factors Company to its agent at said appraised value of

\$40.00 per share and thereby sustained a loss in said amount of \$289,680.00, that sum being the difference between the purchase price of said stock at par and the sale price thereof at \$40.00 per share, said loss being due to the fall in the value of the stock of said Sugar Factors Company, Limited, by reason of the fall in the value of its principal asset its stock in said Refining Company by reason of said losses of the latter company in the latter part of the year 1920.

Early in the year, 1921, a new corporation named the California and Hawaiian Sugar Refining Corporation was incorporated under the laws of the State of California with a much larger capital than that of said California and Hawaiian Sugar Refining Company, and the latter company thereupon sold to new corporation all of its assets, subject to its liabilities, in consideration of the issuance to it by said new corporation of all of the latter's preferred stock of the par value of \$2,500,000.00, and all of the common stock of said new corporation of the par value of \$10,000,000.00 was offered at par to plantations and persons engaged in the sugar business in Hawaii in substantially [9] the proportion that the sugar produced by them respectively bore to the total sugar produced by all of them and was purchased by them at the par value thereof.

Upon these facts the Ewa Plantation Company contends that said loss is properly deductible in computing its net income for the 1920 taxation

period and the Assessor contends that it is not a deductible loss.

If the contention of the Assessor should be sustained the amount of income taxes payable by the Ewa Plantation Company would be increased by the sum of \$11,587.20 over the amount shown by the company's said return.

(6) That said assessor has disallowed a certain deductible claim in Schedule "B" of the tax return, namely, item "15-(d) Loss on Sale, Miscellaneous Bonds," in the sum of \$197,824.11. The facts in this regard are as follows:

That the said miscellaneous bonds were purchased at the times and prices set forth in Exhibit "C" hereto attached and made a part hereof; that the market and sale value of said bonds fluctuated from time to time during the period that the same were held by said Ewa Plantation Company; that the said bonds were sold in 1920 at their then full market value and at a price which was \$197,824.11 less than their original cost; and \$69,512.98 less than the market value of said bonds on December 31, 1919; that the said bonds were sold because the Company deemed it advisable to sell them in order to prevent possible greater loss; and that the prices received for said bonds represented the full market value thereof at the time they were sold.

Upon these facts the company contends that the said amount of \$197,824.11 is a loss within the meaning of the income tax statute and is properly deductible in computing the net income of

said Company, and upon the same facts the tax assessor [10] contends that that amount is not so deductible, either in whole or in part.

If the contention of the tax assessor should be sustained, the amount of income taxes payable by said Company would be increased by the sum of \$7,912.96 over the amount shown by the Company's said return.

(7) That judgment may be entered herein by the Court assessing the amount payable as income taxes by said Company in accordance with the views of the Court upon the facts herein agreed upon.

Honolulu, Hawaii, April 29, A. D. 1921.

EWA PLANTATION COMPANY.

By (Sig.) ROBERTSON, CASTLE &  
OLSON,

Its Attorneys,

CHARLES T. WILDER,

Tax Assessor,

By (Sig.) HARRY IRWIN,

Attorney General.

FREAR, PROSSER, ANDERSON & MARX,  
SMITH, WARREN & STANLEY,  
HENRY HOLMES,

Of Counsel.

First Judicial Circuit,  
City and County of Honolulu,  
Territory of Hawaii,—ss.

Harry Irwin, being first duly sworn, deposes and says that he is the duly appointed, acting and qualified Attorney General of the Territory of Ha-

waii, and that he makes this affidavit for and on behalf of Charles T. Wilder, Tax Assessor, one of the parties to the foregoing submission; that he has read the foregoing Submission of Facts, knows the contents thereof; and that the same is true to the best of his knowledge and belief. This deponent further says that the controversy set forth in the said Submission is a real one and that this proceeding was instituted in good faith to determine the rights of the parties.

[Seal] (Sig.) THERESA CLARK,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. [11]

**Exhibit "A."**

**EWA PLANTATION.**

Form C

Territory of Hawaii  
DISTRICT OF HONOLULU  
First Taxation Division  
CORPORATION INCOME TAX RETURN  
1921

Statement of Gains, Profits and Income during the  
Twelve Months Preceding January 1, 1921, of

Name

CASTLE & COOKE, LTD.

Agent for

EWA PLANTATION

Agent's Address, Street and Number

Agent's Business Telephone No. \_\_\_\_\_

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**SUMMARY**

**INCOME TAX**

	[Use this column]	[Use this column]
Gross Income	\$12,901,542.22	\$.....
Deductions	\$ 8,987,904.19	\$.....
Net Income	\$ 3,913,638.03	\$.....
Tax 2 per cent	\$ 78,272.76	\$.....

**SPECIAL INCOME TAX**

Gross Income	\$ .....	\$.....
Deductions	\$ .....	\$.....
Net Income	\$ .....	\$.....
Tax 2 per cent	\$ 78,272.76	\$.....

## SCHEDULE "A"—GROSS INCOME.

## HOW DERIVED.

	Thousands	Hundreds	Cents
	.....\$		
(1) INTEREST ON BONDS (GENERAL).....			
(2) INTEREST ON GOVERNMENT BONDS, U. S. BONDS TREASURY CERTIFICATES.....		62	530 16
(3) INTEREST (GENERAL) .....		43	730 18
(4) INTEREST ON MAINLAND AND FOREIGN INVESTMENTS .....		52	442 23
(5) DIVIDENDS FROM CORPORATION STOCKS.....			
(6) SALES OF REAL ESTATE, INCLUDING LEASEHOLDS, PURCHASED WITHIN TWO YEARS.....			
(7) SALES OF STOCKS AND BONDS PURCHASED DURING THE YEAR 1920.....			
(8) SALES OF MOVABLE PROPERTY: (a) MERCHANDISE.....		343	802 74
(b) SUGAR .....		9059	636 38
(c) SUGAR .....			
(d) MOLASSES .....			
(e) LIVE STOCK.....(h) HIDES.....(k) BEEF.....			28 445 23

	Thousand Hundred Cents
(f) FARM TRUCK.....(i) ICE.....(1) MILK.....	
(g) ELECTRICITY.....\$363.11..(j) WATER.....\$439.74....(m) SEED CANE.....	\$802 85
(9) PETTY REALIZATIONS:	
(a) PASTURAGE.....(b) FINES.....(c) UNCLAIMED WAGES.....	1 024 04
(10) UNDERESTIMATE OF SUGARS UNACCOUNTED FOR DEC. 31st, 1919.....	
(11) UNDERESTIMATE OF MOLASSES UNACCOUNTED FOR DEC. 31st, 1919.....	
(12) RANCH PROFITS.....	
(13) GROSS RENTALS FROM WITHIN THE TERRITORY.....	
(14) COMPENSATION FORM INSURANCE.....	116 236 53
(15) AMOUNT DEDUCTED FROM 1920 RETURN TO COVER FEDERAL TAX PAYABLE IN 1920.....	857 172 00
(16) DONATIONS CHARGED TO EXPENSE ACCT., NOT DEDUCTIBLE FROM INCOME.....	8 414 75
(17) AMOUNTS PAID OR PAYABLE, DISTRIBUTED OR DISTRIBUTABLE TO SHAREHOLDERS FROM ANY FUND OR ACCOUNT.....	
(18) AMOUNTS CARRIED TO THE ACCOUNT OF ANY FUND OR USED FOR CONSTRUCTION OR EN- LARGEMENT OF PLANT, AND OTHER EXPENDITURES OR INVESTMENTS PAID FROM NET ANNUAL PROFITS.....	
(19) ALL OTHER INCOME RECEIVED FROM ANY SOURCE AS Co. Grinding Contract.....	2 373 38
.....Strike Claim Settlement.....	2324 931 75
TOTAL.....	\$12901 542 22

[15] SCHEDULE "B"—DEDUCTIONS AND EXEMPTIONS.		Thousands Hundreds Cents
(1)	INTEREST ON GOVERNMENT BONDS.....	\$ 62 530 16
(2)	INTEREST ON MAINLAND AND FOREIGN INVESTMENTS .....	52 442 23
(3)	INTEREST ON EXISTING INDEBTEDNESS ACTUALLY PAID DURING THE YEAR 1920.....	1 778 83
(4)	DIVIDENDS FROM CORPORATION STOCKS, WHICH YOU RETURN UNDER ITEM 5 IN SCHEDULE "A".....	
(5)	COST OF CROP (INCLUDING PROPERTY TAXES PAID) .....	3767 310 22
(6)	MARKETING EXPENSES (UNLESS INCLUDED IN ITEM 5).....	691 415 94
(7)	AGENCY AND OTHER EXPENSES (UNLESS INCLUDED IN ITEM 5).....	
(8)	OVERESTIMATE OF SUGAR UNACCOUNTED FOR DEC. 31st, 1919.....	
(9)	OVERESTIMATE OF MOLASSES UNACCOUNTED FOR DEC. 31st, 1919.....	
(10)	COST OF REAL ESTATE, INCLUDING LEASEHOLDS PURCHASED SINCE 1918 AND MENTIONED AS SOLD, IN SCHEDULE "A".....	
(11)	COST OF STOCKS AND BONDS PURCHASED DURING THE YEAR 1920 AND MENTIONED AS SOLD IN SCHEDULE "B".....	
(12)	COST OF MERCHANDISE MENTIONED AS SOLD, IN SCHEDULE "A".....	\$ 334 731 82

	Thousands Hundreds Cents
(13) NECESSARY EXPENSES ACTUALLY INCURRED IN CARRYING ON BUSINESS OR IN MANAGING PROPERTY ITEMIZE ON NEXT PAGE.....	
(14) LOSSES ARISING FROM FIRE.....	4 491 93
(15) LOSSES--(a) BAD DEBTS.....	721 818 95
(b) STRIKE LOSS.....	289 680 00
(c) LOSS ON SALE SUGAR FACTORS STOCK.....	197 824 11
(d) LOSS ON SALE MISCELLANEOUS BONDS.....	
(e) BY EARTHQUAKE.....	
(16) TAXES AND LICENSES NOT INCLUDED IN ITEM NO. 5 OF THIS SCHEDULE.....	33 680 40
(a) PROPERTY INCOME TAX (TERR.).....	33 680 40
(b) LICENSES SPEC. INCOME TAX.....	185 579 88
INCOME TAX (FEDERAL).....	645 590 32
EXCESS PROFITS TAX (FEDERAL).....	8 475 00
CAP. STOCK TAX (FEDERAL).....	7 500 00
AMOUNT SET ASIDE FOR INSURANCE RESERVE.....	1949 374 00
ESTIMATED FEDERAL TAXES, PAYABLE IN 1921.....	\$8987 904 19
TOTAL.....	



### TERRITORY OF HAWAII

Section 1309 of the Revised Laws of Hawaii, provides that

"Every Corporation doing business for profit in the Territory shall make and render to the Assessor of its tax division, between the first and the thirty-first days of January, in each year, a full return verified by oath or affirmation of its duly empowered officer in such form as the Treasurer of the Territory may prescribe, of all the following matters for the taxation period ending December 31st next preceding the date of such return:

- First: The gross receipts of such Corporation from sales made at home or abroad and from all kinds of business, of any name or nature;
- Second: The expenses of such Corporation exclusive of interest, annuities and dividends;
- Third: The amount paid on account of interest, annuities and dividends stated separately;
- Fourth: The amount expended on permanent improvements;
- Fifth: The amount paid in salaries or compensation of more than six hundred dollars to each person employed during each taxation period,\* and the name and amount paid to each."

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\*The taxation period here referred to is the period beginning January 1st, 1920, and ending December 31st, [18]

1920.

Territory of Hawaii,

City and County of Honolulu,—ss.

The undersigned being duly sworn deposes and says: That he is —— of the ——; that he has read the foregoing return by him subscribed for and on behalf of said —— and knows the contents thereof; that the same is a true, full and complete return, and that the facts herein set forth are true to the best of his knowledge and belief.

Sworn to before me this —— day of January,  
A. D. 1921.

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(Sign your name here before filing.)

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(Deputy Assessor. [19])

## LWA PLANTATION COMPANY

## EXHIBIT "B"

## INCOME FROM MAINLAND INVESTMENTS.

	Par Value	Rate of Interest	Income Year 1920
<u>MAINLAND RAILROAD BONDS</u>			
Atlantic Coast Line	21,000.	4%	747.69
Baltimore & Ohio	30,000.	4	1,096.67
" " " S.W.	17,000.	3-1/2	543.66
" " " P.L.E. & W.Va.	7,000.	4	264.66
Chicago, Burl. & Quincy Jt.	10,000.	4	361.11
" " " Gen'l.	25,000.	4	911.11
Chicago & N.W.	10,000.	3-1/2	366.67
Chicago, M. & St. Paul Gen'l.	24,000.	4	598.66
Central Pacific Ref.	25,000.	4	675.01
Illinois Central Ref.	23,000.	4	650.34
Lake Shore & Mich. S.R.	23,000.	4	625.44
Louisville & Nashville Unified	25,000.	4	677.76
Northern Pacific P.L.	37,000.	4	1,307.33
Oregon Short Line	25,000.	4	937.34
Reading	31,000.	4	1,157.33
Southern Pacific Ref.	22,000.	4	769.56
Union Pacific Ref.	29,000.	4	1,040.79
West Shore	30,000.	4	1,120.00
Chicago & N.W. Gen'l.	12,000.	4	446.00
Chicago Union Station	21,000.	4-1/2	868.90
Delaware & Hudson	25,000.	4	930.56
Great Northern Ry.	1,000.	4-1/4	39.67
Kansas City Terminal	24,000.	4	895.44
New York Central	22,000.	3-1/2	703.70
Union Pacific 1st L.G.	12,000.	4	446.00
Penn. R.R. Cons.	20,000.	4-1/2	777.50
" " Gen'l.	25,000.	4-1/2	964.36
Atchafson Gen'l.	27,000.	4	951.00
<u>MAINLAND INDUSTRIAL BONDS</u>			
Cal. Gas & Elec. Unified	25,000.	5	1,069.67
Amer. Tel. & Tel. Co.	22,000.	4	823.77
Armour & Co. Real Estate	27,000.	4-1/2	1,090.12
Spring Valley Water	25,000.	4	1,000.00
<u>MISCELLANEOUS INCOME</u>			
Cal. & Hawaiian Sugar Refining Co. Notes		7	16,940.25
Bank Deposits			
Canadian Bank of Commerce		4-3/4	4,385.43
Wells Fargo Nevada National Bank		5	5,123.29
<u>Total</u>			\$52,442.23



SWA PLANTATION COMPANY

EXHIBIT "C"

LOSS ON SALE OF SECURITIES

Security	Year of Purchase	Cost	Market Price Dec. 31, 19	Market Value Dec. 31, 19	Depreciation during year 1920	Amount Realized	Loss
<b>MAINTENANCE</b>							
Atlantic Coast Line	1911-1916	19,620.00	79.675	16,773.75	447.75	16,326.00	3,294.00
Baltimore & Ohio	1911-1916	28,715.00	66.50	20,880.00	795.00	20,085.00	8,630.00
" " (Gen'l.)	1911-1916	18,531.25	77.00	13,090.00	135.50	12,954.50	5,576.75
" " (Gen'l.)	1911-1916	6,299.75	58.00	4,060.00	249.50	4,320.50	1,979.25
Chicago, Burlington & Quincy St. Ry. Co.	1911	9,823.75	95.00	9,500.00	110.00	9,410.00	413.75
Chicago & N.W.	1911-1916	23,638.75	79.50	19,875.00	250.75	19,624.25	4,014.50
Chicago, W. & N.W. Gen'l.	1911	8,602.50	68.125	5,812.50	277.50	6,535.00	2,067.50
Central Pacific of Ill.	1911-1916	22,565.00	71.00	17,040.00	996.00	16,044.00	6,521.00
Illinois Central of Lake Shore & Mich. S.R.	1911-1916	23,420.00	76.75	19,187.50	1,252.75	17,934.75	5,485.25
Indianapolis & Nashville R.R.	1911-1916	21,427.50	76.50	17,595.00	472.00	17,123.00	4,304.50
Northern Pacific P.L.	1911-1916	21,577.50	83.875	19,291.25	580.75	18,710.50	2,867.00
Oregon Short Line	1911-1916	24,296.25	84.50	21,125.00	837.50	20,287.50	4,008.75
Reading	1911-1916	35,972.50	79.50	29,415.00	1,165.50	28,249.50	7,723.00
Southern Pacific of Union Pacific of.	1911-1916	23,311.25	64.75	21,062.50	1,850.00	19,212.50	4,098.75
West Shore	1911-1916	23,311.25	81.00	25,110.00	69.75	25,179.75	4,867.75
Chicago & N.W. General	1911-1916	30,088.50	78.50	21,225.00	858.50	20,366.50	9,722.00
Chicago & N.W. General	1911-1916	20,694.25	80.125	23,254.25	1,880.45	21,373.80	9,320.45
Chicago & N.W. General	1911-1916	27,816.25	75.50	22,050.00	1,582.50	20,467.50	7,348.75
Chicago & N.W. General	1911-1916	29,793.75	79.50	23,685.00	303.00	23,382.00	6,411.75
Chicago & N.W. General	1916	11,365.00	79.50	9,480.00	582.75	8,897.25	2,467.75
Chicago & N.W. General	1916	21,000.00	81.625	17,141.25	60.50	17,080.75	3,919.25
Chicago & N.W. General	1911-1916	24,603.75	61.00	20,250.00	975.00	19,275.00	5,328.75
Chicago & N.W. General	1916	988.75	83.50	825.00	46.50	788.50	200.25
Chicago & N.W. General	1916	21,048.75	76.00	16,240.00	1,427.25	14,812.75	6,236.00
Chicago & N.W. General	1916	18,095.00	68.625	15,097.50	60.50	15,037.00	3,058.00
Chicago & N.W. General	1916	21,718.75	80.125	9,615.00	3.00	9,612.00	12,106.75
Chicago & N.W. General	1916	21,175.00	92.00	10,400.00	480.00	10,980.00	10,195.00
Chicago & N.W. General	1916	25,734.38	84.50	21,185.00	787.50	20,397.50	5,336.88
Chicago & N.W. General	1911-1916	26,232.50	81.00	22,140.00	1,680.50	20,459.50	5,783.00
<b>603,000.</b>		<b>574,290.63</b>		<b>478,467.50</b>	<b>19,227.70</b>	<b>459,239.80</b>	<b>117,050.83</b>
<b>MAINTENANCE</b>							
Calif. Gas & Elec. Co.	1916	24,895.00	90.25	22,562.50	1,836.75	20,725.75	4,169.25
Amer. Tel. & Tel. Co.	1916	20,330.00	78.50	17,270.00	803.00	16,467.00	3,863.00
Amer. Tel. & Tel. Co.	1916	25,110.00	83.50	21,845.00	2,265.00	19,580.00	5,530.00
<b>74,000.</b>		<b>70,335.00</b>		<b>62,677.50</b>	<b>4,999.75</b>	<b>57,677.75</b>	<b>12,657.25</b>
<b>U.S. GOVERNMENT OBLIGATIONS:</b>							
First Liberty Bonds	1917-1919	186,130.00	100.00	186,372.00	17,856.53	168,515.47	17,614.53
Second " "	1917	122,600.00	92.70	113,657.50	9,142.50	104,515.00	18,085.00
Third " "	1916	107,000.00	94.80	94,800.00	4,902.80	89,897.20	17,102.80
Fourth " "	1916	100,000.00	92.80	92,800.00	7,222.80	85,577.20	14,422.80
Fifth " "	1919	108,000.00	99.40	104,800.00	4,097.62	100,702.38	7,297.62
<b>613,500.</b>		<b>613,630.00</b>		<b>591,899.50</b>	<b>46,848.63</b>	<b>545,050.87</b>	<b>68,579.13</b>
<b>U.S. GOVERNMENT OBLIGATIONS:</b>							
U.S. Gov't Bonds	1904-1917	482,800.00				193,120.00	289,680.00
<b>GRAND TOTALS</b>		<b>1,373,300</b>		<b>1,741,085.63</b>		<b>1,253,551.52</b>	<b>487,534.11</b>



[Endorsed]: No. 1327. In the Supreme Court of the Territory of Hawaii. October, 1920, Term. No. ——. Ewa Plantation Company vs. Charles T. Wilder. Submission Without Action. Rec'd and Filed in the Supreme Court April 29, 1921, at 3:55 o'clock P. M. Robert Parker, Jr., Assistant Clerk. [22]

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In the Supreme Court of the Territory of Hawaii.  
October Term, 1921.

No. 1327.

EWA PLANTATION COMPANY

vs.

CHARLES T. WILDER, Tax Assessor for the First  
Taxation Division, Territory of Hawaii.

No. 1328.

HAWAIIAN SUGAR COMPANY

vs.

CHARLES T. WILDER, Tax Assessor for the First  
Taxation Division, Territory of Hawaii.

**Opinion of Supreme Court.****SUBMISSION UPON AGREED STATEMENTS  
OF FACT.**

Argued January 24, 25, 1922.

Decided February 28, 1922.

COKE, C. J., KEMP and EDINGS, JJ.

Taxation—Income.

Where a sum is received by the taxpayers in liquidation of losses or damage sustained because of a laborers' strike income tax thereon should be paid for the year in which the payment is made.

Same—Same.

Bonds and stock of mainland municipalities and corporations and bank credits in mainland banks held by mainland agents of a local taxpayer take the situs of the local owner under the maxim *mobilia sequuntur personam* and come within the description of property owned in Hawaii and the income therefrom is taxable under the laws of this Territory. [23]

Same—Same.

The maxim, however, is not of universal application and may yield to the exigencies of particular circumstances.

Same—Same—Losses sustained on the sale of securities—Incurred when.

Where a taxpayer through the sale of securities sustains a loss because of the depreciation in the value of the securities the amount of such loss may be deducted from the income for the year in which the securities were disposed of.

Same—Depreciation or exhaustion of leasehold—  
Deduction from income.

In computing income a proper deduction may be made for actual loss incurred during the taxation period due to exhaustion of all intangible property arising out of its use and employment in the trade or business of the taxpayer including any loss by reason of the exhaustion of a leasehold by efflux of time if such leasehold was actually employed in the business.

Same—Same—Same.

The proper course is for the leasehold to be appraised at the end of each taxation period, and based upon that valuation to deduct a proper amount for the exhaustion of the leasehold occurring during the period, this course to be repeated thereafter at the end of each succeeding taxation period until the termination of the lease.

Same—Same—Same.

The value of a leasehold due to economic causes will vary and it follows that the amount required to amortize the capital investment will also change from time to time. [24]

#### OPINION OF THE COURT BY COKE, C. J.

These two causes are here on original submissions containing agreed statements of fact—a proceeding authorized by section 2381, R. L. 1915, as amended by Act 82 S. L. 1921. The questions involved in both cases are in all material respects parallel and will therefore be consolidated and discussed in a single opinion but a separate judgment will be entered in

each proceeding conformably to the decision. The two plaintiffs above named, to wit, Ewa Plantation Company and Hawaiian Sugar Company, are domestic corporations and the defendant Charles T. Wilder is the tax assessor for the first taxation division of the Territory of Hawaii. The controversy is in respect to the amount of income taxes due from the two plaintiff corporations to the Territory of Hawaii in the year 1921 from income received in 1920.

The agreed statements of fact are entirely too voluminous to be recited here but the questions at issue may be summarized as follows: (1) Whether the amount received by Ewa Plantation Company from the Hawaiian Sugar Planters Association in 1920 by way of compensation for losses incurred by reason of the laborers' strike on the Island of Oahu should be accounted for as a whole as a receipt during the year 1920, or may be apportioned to the crops of 1920, 1921 and 1922 in accordance with the prevailing system of accounting upon the crop method; (2) whether interest upon mainland investments, including municipal bonds, accruing during the taxation period is taxable income under the law of this Territory as applied to the agreed facts; (3) whether the amount of loss sustained through the sale of shares in the Sugar Factors Company during 1920 is deductible as a loss in computing the income taxes of the said companies for the year [25] 1920 under the facts set forth in the submissions; (4) whether the amount of loss sustained through the sale of mainland bonds sold and realized upon

during the year 1920 is deductible as a loss in computing the income taxes of the said companies for the year 1921 under the facts set forth in the submissions; (5) whether the amount of depreciation in value of a leasehold should be allowed as a deduction in computing the income tax of the Hawaiian Sugar Company for the year 1920 under the law of this Territory as applied to the agreed facts.

As thus categorically classified the several subjects will be taken up and disposed of except that the questions set forth in paragraphs 3 and 4 being closely allied and so nearly analogous will be considered and determined together.

### STRIKE RECEIPTS.

The first question concerns solely the Ewa Plantation Company and grows out of a laborers' strike begun in the early part of 1920 and which ended in July of the same year, conducted by the Filipino and Japanese laborers employed on the sugar plantations on the Island of Oahu, the Ewa Plantation being among those affected. It appears that the Hawaiian Sugar Planters Association, which is composed of practically all of the sugar producing concerns in the Territory, entered into an agreement with the plantations on Oahu by which the latter plantations were to resist the demands of the strikers and at the conclusion of the strike the association was to make reimbursement to them for all losses sustained by reason of the strike. Following the conclusion of the strike it was ascertained that the strike losses amounted to \$12,119,317.30 made up of

\$635,959.42 in expenses incurred by the association and \$11,483,357.88 in losses sustained directly by the several plantations on Oahu affected by the strike. [26] All of the plantation members of the association paid their *pro rata* of the \$12,119,317.30 on or before December 31, 1920, the *pro rata* of the Ewa Plantation being the sum of \$721,818.95. The said Ewa Plantation received in full settlement of its strike losses on its claim for reimbursement thereof the sum of \$2,791,697.72, this amount being made up of estimated losses in taxable profits as follows: For the crop of 1920, \$2,324,931.75; for the crop of 1921, \$133,706.29, and for the crop of 1922, \$333,059.68. The Ewa Plantation in its income tax return for the year 1920 deducted the said sum of \$721,818.95 contributed by it as its *pro rata* of the gross losses as aforesaid and returned the said sum of \$2,324,931.75 only as income for the year 1920 on the amount which it received from the association as its share of the loss sustained. Under these facts it is the contention of the company that the other two amounts, namely, \$133,706.29 and \$333,059.68 were received on account of losses of taxable profits on the crops of 1921 and 1922 respectively and should be returned as income for those respective years and therefore were properly excluded from its 1920 return. It is the contention of the tax assessor that since the two last mentioned sums were actually received during the 1920 taxation period, whether they be regarded as advance realizations of the 1921 and 1922 crops or

otherwise, they should be returned as income accruing during the 1920 taxation period.

It is agreed that should the contention of the assessor be sustained on this point the amount of income taxes payable by said company should be increased by the sum of \$18,607 over the amount shown by the company's said return. The statutory provisions bearing upon the questions at issue are to be found in section 1305 R. L. 1915 which provides that the taxation period shall be the year immediately preceding the first day of January of each [27] year in which the tax is payable. Section 1306 R. L. 1915 provides that there shall be levied and collected a tax of two per cent on the net profit or income above actual operating and business expenses derived during the taxation period from all property owned and every business, trade, employment or vocation carried on in the Territory of Hawaii, and section 1307 provides that "in estimating the gains, profits and income of any \* \* \* corporation, there shall be included all income derived from interest upon notes," etc., "and all other gains, profits and income derived from any source whatsoever during said taxation period." Section 1307 also provides that "in estimating the gains, profits and income of any person or corporation, there shall be included \* \* \* the amount of sales of movable property, less the amount expended in the purchase or production of the same."

The company contends that under the paragraph last above quoted the several sums received

from the Hawaiian Sugar Planters Association should not be taken into account for taxation purposes until and as each crop shall have been sold and the net result ascertained. The company relies upon the decisions rendered in *Tax Assessor vs. Laupahoehoe Sugar Company*, 18 Haw. 206, and in the *Income Tax Appeal Cases*, 18 Haw. 596, 599. In each of these cases it was held that moneys expended prior to the taxation period in the production of sugar were deductible, not in the period in which the expenditure was made but at the time the crop was sold. These decisions we think are in accord with the provisions of the statute. In the present case, however, we are confronted with a different set of facts. It must be borne in mind that we are now dealing with a receipt and not an expenditure. The amount paid was merely in liquidation of an estimated loss or damage sustained by the company because of the strike. Whether this estimate proves to be even approximately [28] correct will necessarily depend upon many contingencies, but irrespective of that feature it is plain to us that the company has not the power merely by an arrangement with the Hawaiian Sugar Planters Association, or for the sake of harmony in its accounting system or otherwise, to convert a sum received by it as compensation for damages caused by the laborers' strike into an amount expended in the purchase or production of specific growing crops of sugar cane. No such feat is sanctioned by the statutes of Hawaii heretofore quoted nor by the decisions in 18 Haw., *supra*,

which point out that the amount expended in the purchase or production of movable property should be carried over from year to year and deducted at the period when the property is sold, which merely follows the mandate of the statute, but neither the sum involved here nor any part thereof was expended in the purchase or production of movable property and hence the whole amount thereof is included within "other \* \* \* income \* \* \* derived from any source whatsoever during said taxation period." And as the payment was made during the year 1920 the income tax thereon became due in the following year as provided by statute.

#### INTEREST ON MAINLAND SECURITIES AND BANK DEPOSITS.

It is set forth in the submissions that ever since the incorporation of the Ewa Plantation Company Castle & Cooke, Limited, an Hawaiian corporation, has been its general agent at Honolulu and during upwards of twenty years last past Welch & Company, a California corporation with offices in San Francisco, has been the agent at that place of said Castle & Cooke, Limited, and at all times during said period the sugar produced by said Ewa Plantation Company has been sold on the mainland of the United States and the proceeds of sale have been received by said Welch [29] & Company and deposited in California banks and credited on its books to Castle & Cooke, Limited, for the account of said Ewa Plantation Company,

against which credits said Ewa Plantation Company has drawn from time to time as money was required by it for the payment of the expenses of its plantation and dividends upon its stock; that bonds and notes of foreign (mainland) railroad and industrial corporations were purchased by said Welch & Company for the account of said Ewa Plantation Company with surplus moneys of the latter so held as aforesaid by the former company and the said bonds and notes thereafter until they were sold on the mainland remained on deposit with said Welch & Company and none of said bonds and notes or the proceeds with which they were purchased have been held in said Territory nor have they been physically present therein at any time, that during the period of upwards of twenty years last past Alexander & Baldwin, Limited, an Hawaiian corporation having offices in Hawaii, California and New York, has been the agent of the Hawaiian Sugar Company; that the president of said Alexander & Baldwin, Limited, was and is in charge of its said California offices and other officers or employees thereof or representatives of said Hawaiian Sugar Company with power to effect transfers of its stock which is listed on the San Francisco stock exchange; that at all times during said period the sugar produced by said Hawaiian Sugar Company has been sold on the mainland of the United States and the proceeds of sale have been received by said Alexander & Baldwin, Limited, at either one or the other of its said offices on the mainland and there credited to the account

of said Hawaiian Sugar Company, against which said credit said Hawaiian Sugar Company has drawn from time to time as money was required by it for the payment of the expenses of its plantation and dividends upon its stock; that bonds of certain municipalities on the mainland of the [30] United States and of foreign (mainland) railroad corporations were purchased on the mainland by said Alexander & Baldwin, Limited, for the account of said Hawaiian Sugar Company with surplus moneys of the latter so held as aforesaid by the former company and said bonds thereafter until they were sold by said Alexander & Baldwin, Limited, on said mainland were held by it at its offices in California or New York and none of such bonds have been held in said Territory nor have they or said proceeds with which they were purchased been physically present therein at any time.

The Ewa Plantation Company and Hawaiian Sugar Company, respectively, deducted the interest arising from these investments as income for the year 1920 in its territorial income tax return, the amount deducted by the Ewa Plantation Company being \$52,442.23, and the amount deducted by the Hawaiian Sugar Company being \$32,659.66. Upon these facts it is the contention of said companies that the interest accruing from said bonds, notes and bank deposits was not taxable as income derived from property owned in the Territory of Hawaii or otherwise under the laws of said Territory. On the other hand it is claimed by the

assessor that said interest upon said bonds, notes and bank deposits was and is taxable income of said companies under the laws of Hawaii. It is agreed that should the contentions of the assessor be sustained the amount of income tax payable by said Ewa Plantation Company should be increased by the sum of \$2097.68 over the amount shown by the company's said return, and that the amount of income tax payable by said Hawaiian Sugar Company should be increased by the sum of \$1306.56 over the amount shown by the company's said return.

In the case of the latter company there is an attempt to draw a distinction between interest on mainland and foreign [31] investments and municipal bonds of mainland cities. We think these investments are all on the same plane so far as the principles involved are concerned and will be dealt with in this opinion accordingly.

It is regrettable that while the submissions contain statements to the effect that the proceeds of the sales of sugar by the mainland agencies of the taxpayers were placed to the general credit of the local companies to be drawn against from time to time as funds were required by them for the payment of their operating expenses, etc., the submissions are silent respecting the disposition and use of the income derived from the mainland investments now in question. In the absence of a showing to the contrary we are led to assume that the income received from these mainland securities and bank deposits was dealt with in the same manner as the proceeds from the sales of sugar.

The statute by virtue of which the assessor claims the income from these investments is properly taxable as income is section 1306, R. L. 1915. This statute reads as follows: "On corporation income. There shall be levied, assessed, collected and paid annually, except as hereinafter provided, a tax of two per cent on the net profit or income above actual operating and business expenses derived during each taxation period, from all property owned, and every business, trade, employment or vocation, carried on in the Territory of Hawaii, of all corporations, doing business for profit in the Territory, no matter where created and organized; provided, however, that nothing herein contained shall apply to corporations, companies or associations, conducted solely for charitable, religious, educational or scientific purposes, including fraternal beneficiary societies, nor to insurance companies, taxed on a percentage of the premiums under the authority of another law." If this statute be stripped of the language not material to the cases at bar it would read: [32] "There shall be levied, assessed, collected and paid annually a tax of two per cent on the net income from all property owned in the Territory of Hawaii of all corporations doing business for profit in the Territory, no matter where created or organized." At the very outset counsel for the Territory concede that the phrase "owned in Hawaii" as employed in section 1306 must be taken as referring to the property and not the owner and the final form of the question is, "Are these bonds and deposits property

in Hawaii," and that "the case stands as though the statute read 'income from property in Hawaii owned by the taxpayer.' " We are not as ready as counsel to accept this construction of the meaning of the statute. It seems to us that it could be strongly argued that the phrase "property owned in Hawaii" has reference to the place of ownership and not to the location of the property. We are referred to the rule that in the construction of a statute the language employed should be taken in its common and usual signification and we are reminded that if a person were asked, "What property do you own in the Territory?" he would not in answering enumerate bonds and notes of foreign or mainland corporations or deposits in foreign or mainland banks. This may be true, but on the other hand if the San Francisco agents of these corporations were asked in respect to the property in question, "Where are these bonds, notes or bank credits owned?" the answer obviously would be, "In the Territory of Hawaii," and that answer would be entirely correct. We will not pursue this discussion further for the reason that even adopting the construction placed upon the statute by the parties the result will be the same.

If it be conceded that the statute refers to the income from property situated in Hawaii the position of the assessor can [33] only be sustained by invoking the doctrine of the maxim *mobilia sequuntur personam*, that is to say, that movables follow the person of the owner. Counsel for the taxpayers urge that the maxim has been repudiated in this

jurisdiction by the supreme court in Hackfeld vs. Minister of Finance, 3 Haw. 292; Hackfeld vs. Luce, 4 Haw. 172, and Estate of Hall, 19 Haw. 531. It is further contended that if the maxim is an enforceable rule in this jurisdiction yet under the circumstances here divulged the bonds, notes, etc., have become localized and thus have acquired a business situs in San Francisco. Counsel for the taxpayers cite many authorities bearing upon the question, the leading ones being State Tax on Foreign held Bonds, 15 Wall. 300; New Orleans vs. Stempele, 175 U. S. 309; Bristol vs. Washington County, 177 U. S. 133; Union Transit Co. vs. Kentucky, 199 U. S. 194; Liverpool & London & Globe Ins. Co. vs. Board of Assessors, 221 U. S. 346; DeGanay vs. Lederer, 250 U. S. 376. The general trend of these authorities is that tangible personal property permanently located in a State other than the domicile of the owner acquires a situs and is subject to be taxed irrespective of the domicile of the owner and any attempt on the part of the State in which the owner is domiciled to tax such property is unlawful; that the maxim *mobilia sequuntur personam* is a legal fiction to be resorted to only when convenience and justice require. It is further held that bonds and other negotiable instruments are becoming more and more to be looked upon and regarded as property and not merely as evidence of debt. The case of DeGanay vs. Lederer is the leading case and perhaps the strongest cited in support of the position maintained by counsel of the taxpayers. In that case certain stocks and bonds is-

sued by Pennsylvania corporations and mortgages secured on real estate in the same State were owned by an alien resident of France and were in the hands [34] of an agent in this country acting under a power of attorney which authorized and empowered the agent to sell, assign and transfer any of the property and to invest and reinvest the proceeds as it might deem best in the management of the business and affairs of the owner. The question was whether the income from this property was subject to tax under the federal income tax law of October 3, 1913, as income from property owned in the United States by persons residing elsewhere, and it was held that it was in the following language: "We have no doubt that the securities herein involved are property. Are they property within the United States? It is insisted that the maxim *mobilia sequuntur personam* applies in this instance, and that the situs of the property was at the domicile of the owner in France. But this Court has frequently declared that the maxim, a fiction at most, must yield to the facts and circumstances of cases which require it; and that notes, bonds and mortgages may acquire a situs at a place other than the domicile of the owner, and be there reached by the taxing authority. It is only necessary to refer to some of the decisions of this Court. *New Orleans vs. Stempel*, 175 U. S. 309; *Bristol vs. Washington County*, 177 U. S. 133; *Blackstone vs. Miller*, *supra*; *State Board of Assessors vs. Comptoir National d'Escompte*, 191 U. S. 388; *Carstairs vs. Cochran*, 193 U. S. 10; *Scottish*

Union & National Ins. Co. *vs.* Bowland, 196 U. S. 611; Wheeler *vs.* New York, 233 U. S. 434, 439; Iowa *vs.* Slimmer, 248 U. S. 115, 120. Shares of stock in national banks, this Court has held, for the purpose of taxation may be separated from the domicile of the owner, and taxed at the place where held. Tappen *vs.* Merchants' National Bank, 19 Wall. 490. In the case under consideration the stocks and bonds were those of corporations organized under the laws of the United States, and the bonds and mortgages were secured upon property in Pennsylvania. The certificates of stock, the bonds and mortgages [35] were in the Pennsylvania Company's offices in Philadelphia. Not only is this so, but the stocks, bonds and mortgages were held under a power of attorney which gave authority to the agent to sell, assign or transfer any of them, and to invest and reinvest the proceeds of such sales as it might deem best in the management of the business and affairs of the principal. It is difficult to conceive how property could be more completely localized in the United States. There can be no question of the power of Congress to tax the income from such securities. Thus situated and held, and with the authority given to the local agent over them, we think the income derived is clearly from property within the United States within the meaning of Congress as expressed in the statute under consideration."

It is worthy of note that in the DeGanay case the Court emphasized the fact that the stocks, bonds and mortgages were held in Pennsylvania under a

power of attorney which gave authority to the agent to sell, assign and transfer any of them and to invest and reinvest the proceeds of sale as it might deem best in the management of the business and affairs of the principal. No such situation exists in the cases at bar. The mainland agents of the taxpayers were apparently clothed only with authority to purchase and hold the securities and as the income thereon was received to place the same to the credit of their principals to be drawn upon from time to time as money was required for the payment of the expenses of their plantation and dividends upon their stock. These securities therefore were not localized nor did they enjoy a business situs such as is referred to in the DeGanay case. But even in that case, while the Court held that they were subject to the federal income tax law because of their local situs within the United States, the Court did not infer by that that the income thereof would not have been taxable at the domicile of their owner; and the same may be said of the [36] income from the securities now in question. The mere fact that such income might be taxable in Hawaii under our local statute is no authority for holding that the same income might not be taxed in the State of California under the income tax laws of that state, for liability to taxation in one State does not necessarily exclude liability in another. *Kidd vs. Alabama*, 188 U. S. 730, 732; *Hawley vs. Malden*, 232 U. S. 1, 13. *Kirtland vs. Hotchkiss*, 100 U. S. 491, is a case concerning Illinois bonds secured by a deed of trust upon prop-

erty situated in the latter State. In that case the Court held that the debt "although a species of intangible property may for the purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor. It is none the less property because its amount and maturity are set forth in a bond. That bond, wherever actually held or deposited, is only evidence of the debt, and if destroyed, the debt—the right to demand payment of the money loaned with the stipulated interest—remains. Nor is the debt, for the purposes of taxation, affected by the fact that it is secured by mortgage upon real estate situated in Illinois.

\* \* \* The debt then having its situs at the creditor's residence, both he and it are for the purposes of taxation within the jurisdiction of the State." The general principles laid down in the Kirtland-Hotchkiss decision are referred to in *Fidelity & Columbia Trust Co. vs. Louisville*, 245 U. S. 54, at 59, as affirming and assuming to be the law in every subsequent case, citing *Bonaparte vs. Appeal Tax Court*, 104 U. S. 592; *Pullman's Palace Car Co. vs. Pennsylvania*, 141 U. S. 18, 29, 31; *Savings & Loan Society vs. Multnomah County*, 169 U. S. 421, 431; *New Orleans vs. Stempel*, *supra*; *Liverpool & London & Globe Ins. Co. vs. Assessor*, *supra*.

And finally the principle involved was again passed upon in the late case of *Maguire vs. Trefry*, 253 U. S. 12. This is not only a most recent case but is we think the controlling authority. [37] The question in that case was whether the income received by the beneficiary from a trust estate con-

sisting of bonds and equipment certificates held and administered by the trustee in another State is taxable by the State of the beneficiary's domicile. The question was answered in the affirmative. It appears that the beneficiary resided in the State of Massachusetts and was taxed upon income from a trust created by the will of one Matilda P. McArthur, formerly of Philadelphia. The securities consisting of bonds of other corporations and certain certificates of the Southern Railway Equipment Company were held in the possession of the trustees in Philadelphia and the trust was administered under the laws of the State of Pennsylvania. The tax commissioner of the Commonwealth of Massachusetts attempted to levy a tax upon the revenues derived by the beneficiary from said securities under the income tax statute of that State. In its opinion the Court says: "It is true that in some instances we have held that bonds and bills and notes although evidences of debt have come to be regarded as property which may acquire a taxable situs at the place where they are kept, which may be elsewhere than at the domicile of the owner. These cases rest upon the principle that such instruments are more than mere evidences of debt, and may be taxed in the jurisdiction where located and where they receive the protection of local law and authority. \* \* \* At the last term we held in *DeGanay vs. Lederer*, 250 U. S. 376, that stocks and bonds issued by domestic corporations, and mortgages secured on domestic real estate, although owned by an alien nonresident, but in the hands of

an agent in this country with authority to deal with them, was subject to the Income Tax Law of October 3, 1913, 38 Stat. 166. In the present case we are not dealing with the right to tax securities which have acquired a local situs but are concerned with the right of the State to tax the beneficiary of a trust at her residence, although the trust itself may be created and administered [38] under the laws of another State. In *Fidelity & Columbia Trust Company vs. Louisville*, 245 U. S. 54, we held that a bank deposit of a resident of Kentucky in the bank of another State, where it was taxed, might be taxed as a credit belonging to the resident of Kentucky. In that case *Union Refrigerator Transit Co. vs. Kentucky*, *supra*, was distinguished and the principle was affirmed that the State of the owner's domicile might tax the credits of a resident although evidenced by debts due from residents of another State. This is the general rule recognized in the maxim *mobilia sequuntur personam*, and justifying, except under exceptional circumstances, the taxation of credits and beneficial interests in property at the domicile of the owner. We have pointed out in other decisions that the principle of that maxim is not of universal application and may yield to the exigencies of particular situations. But we think it is applicable here. It is true that the legal title of property is held by the trustee in Pennsylvania, but it is so held for the benefit of the beneficiary of the trust and such beneficiary has an equitable right, title and interest distinct from its legal ownership. \* \* \* It is this prop-

erty right belonging to the beneficiary, realized in the shape of income, which is the subject matter of the tax under the statute of Massachusetts. The beneficiary is domiciled in Massachusetts, has the protection of her laws, and there receives and holds the income from the trust property. \* \* \* The case presents no difference in principle from the taxation of credits evidenced by the obligations of persons who are outside of the State which are held taxable at the domicile of the owner. *Kirtland vs. Hotchkiss*, 100 U. S. 491."

This case is important for here in the last word upon the subject the Supreme Court of the United States has not only adopted and applied the maxim *mobilia sequuntur personam* but has [39] directly reaffirmed the decision in *Kirtland vs. Hotchkiss*. In *Union Transit Co. vs. Kentucky*, *supra*, the Court points out that stocks, bonds, notes and choses in action are classified as intangible property and a clear distinction is drawn between that kind of property and tangible personal property such as railway cars having a situs of their own and taxable only in the territorial limits of that situs. But with intangible personal property such as stocks, bonds and bank credits the rule ordinarily is different. This class of property takes the situs of the domicile of its owner by virtue of the maxim *mobilia sequuntur personam*, except under unusual circumstances which do not exist in the cases at bar.

The further point is made by counsel for the taxpayers that the local supreme court in the three Hawaiian cases *supra* has repudiated entirely the

maxim *mobilia sequuntur personam* but with this we cannot agree. Some of the expressions made use of would perhaps lead to that inference but after a careful review of those opinions, taken in the light of the law and facts involved, we conclude that the most that ought to be said of them is that the Court merely intended to hold, as the Supreme Court of the United States has since held in *Maguire vs. Trefry*, *supra*, that the maxim is not of universal application and may yield to the exigencies of particular circumstances.

And finally it is urged that "at no time heretofore has said assessor or his predecessors in office considered income derived from such investments as taxable or included the same in assessing the incomes of corporations or individuals under the laws of the Territory" and that the rule of contemporaneous construction should be given great weight by this Court. The rule is that the contemporaneous construction of a statute by those charged with its execution, especially when it has long prevailed, is to be [40] regarded as a legitimate aid to statutory construction and is entitled to most respectful consideration and should not be disregarded or overturned except for cogent reasons. See *United States vs. Moore*, 95 U. S. 760, also *United States vs. Johnson*, 124 U. S. 236, at 253, and authorities there cited. But the rule which gives determining weight to contemporaneous construction put upon a statute by those charged with its execution applies only in cases of doubt and ambiguity. Courts will ordinarily make use of the contemporaneous

construction of a statute by executive and administrative officials as an aid to interpretation but an erroneous construction can never be binding upon the judiciary.

We conclude that the income in question was and is taxable as now claimed by the assessor.

### LOSS ON SUGAR FACTORS STOCK AND MAINLAND BONDS.

The material facts are that during the years 1904-1917 the Ewa Plantation Company purchased 4,828 shares of the stock of the Sugar Factors Company paying therefor the par value of \$100 per share. The stock thereafter declined in value and finally in the year 1920 the plantation company sold its entire holdings in said stock at \$40 per share, thus sustaining a loss of \$289,608. The same facts exist in relation to the case of the Hawaiian Sugar Company except that the number of shares involved was 1770 and the loss was \$106,200. The taxpayers claimed these respective amounts as proper deductions from gross income in ascertaining the net profits for income tax purposes during the taxation period ending December 31, 1920. The statutory provisions applicable are found in sections 1306 and 1307, R. L. 1915, and section 1 of Act 157, S. L. 917 amending section 1308, R. L. 1915. Section 1308 as amended prescribes the manner of computing the income of corporations for taxation purposes and specifically permits the deduction [41] therefrom of "all losses actually sustained during the taxation period next preceding incurred

in trade or arising from losses by fire not covered by insurance or losses otherwise actually incurred.”

Counsel for the Territory concede that the transactions consisting of the purchase and sale of this stock resulted in losses in the above amounts to the two companies and they further concede that these losses have been actually sustained or actually incurred by the two companies as distinguished from losses which are merely conjectural or estimated; but they make the point, which they rely upon exclusively, that the losses were not sustained within the taxation period now in question, which was the calendar year 1920. They point out that the statute expressly provides that all losses actually sustained must be sustained during the taxation period preceding January 1 of the year in which the tax is imposed. They assert that the stock fluctuated in value from time to time between the date of the purchase and the date of sale and that the losses which the sales demonstrated and fixed in amount were the result of the entire transaction covering the whole period of years in which they were held, and from these facts they draw the conclusion that the losses are not attributable to any one year of that series; that while the losses were “ascertained” at the time of the sale, to wit, in 1920, they were not “sustained” in that year.

The three leading cases relied upon by counsel for the Territory are *In re Taxes Pacific Guano & Fertilizer Co.*, 16 Haw. 552; *Appeal of J. B. Castle*, 18 Haw. 129, and *Gray vs. Darlington*, 15 Wall. 63. In the *Pacific Guano* case the taxpayer in 1894 paid \$85,000 for all of the Laysan Island guano rights

in the belief and upon the advice of experts that there were about 85,000 tons of guano on the island. In 1903 the company discovered that there was [42] only about half of the anticipated amount of guano on the island and during that taxation period the company wrote off \$50,000 to account of profit and loss and claimed that amount to be a loss deductible from its income for that year. It was held by this Court that "the loss which was finally ascertained upon the termination of that business did not occur at the time when it was learned that the guano supply had failed, but it occurred when the purchase money was paid," and the Court proceeded to say: "In one sense a loss is made at the time when one learns that he has not got what he thought he had. In another sense, and as we think in the meaning of the statute, there is in such case no actual loss other than results from an unfortunate investment at the outset." With that opinion we are in entire accord. But in the present case we are dealing with corporation stock which for a series of years following its purchase had fluctuated. It was held during the entire time by the purchaser and finally sold at the then prevailing market price. The losses it seems to us were sustained or incurred at the time of the sale. If that were not true the loss incurred by the purchaser of this class of property which was held over a number of years and during the period of a fluctuating market could never be determined for the simple reason that it could not be ascertained at what particular period the loss actually occurred.

The courts have universally adopted the reasonable, and we might add the only fair, method of computing the loss, and that is by taking the difference between the cost price and the amount realized at the date of sale, and if the latter amount is less than the former then the loss is reckoned as having been sustained at the date of sale. A corporation possessing securities such as stocks and bonds will not be allowed to deduct from gross income an amount claimed as a loss on account of shrinkage in value of such securities through market fluctuations but will in such cases be allowed [43] any loss actually suffered when the securities are disposed of.

The decision of this Court In re Appeal of J. B. Castle, *supra*, asserts a mere conclusion, entirely devoid of any reasons therefor except that it is based upon the decision in Gray vs. Darlington, *supra*, a case involving the construction of the Revenue Act of 1867 (14 Stat. 477, c. 169).

The United States Supreme Court in a recent decision (Hays, Collector, vs. Gauley Mountain Coal Co., 247 U. S. 189) distinguished the corporation excise tax act of August 5, 1909, from the act of March 2, 1867, under which Gray vs. Darlington was decided, and held that where property is sold by a corporation at an advance over the original purchase price the amount of the advance must be deemed to be a gain or profit for the purpose of computing income for taxation under the federal statute. See also Merchants' Loan & Trust Co. vs.

Smietanka, decided by the federal Supreme Court March 28, 1921, and Holmes, Fed. Taxes, p. 632.

In October, 1913, Congress enacted an Income Tax Act which provided that in case of persons there should be deducted from gross income in arriving at taxable income "losses actually sustained during the year incurred in trade or arising from fires, storms and shipwrecks not compensated for by insurance or otherwise," and in the case of corporations it was provided that there should be deducted "all losses actually sustained within the year and not compensated as insurance or otherwise." The treasury department through regulations issued by it took the position in respect to this act as well as subsequent acts containing similar language that where a corporation possesses securities such as stocks and bonds it cannot be allowed to deduct from gross income any amount claimed as a loss on account of the shrinkage in value of such securities through fluctuations on the market or otherwise, [44] the only losses to allowed in such cases being those actually suffered when the securities mature or are disposed of.

There are several subsequent treasury department regulations to the same effect, the latest one called to our attention being Article 44, Regulations 451, April 7, 1919, which reads: "Shrinkage in securities and stocks. A person possessing securities such as stocks and bonds cannot deduct from gross income any amount claimed as a loss on account of the shrinkage in value of such securities through fluctuations in the market or other-

wise. The loss allowable in such cases is that actually suffered when the securities mature or are disposed of." The decisions and rulings promulgated by the treasury department are of course not binding upon the Court but as indicated *supra* they are entitled to consideration. These rulings are significant when considered in light of the fact that the language of the federal statute is no broader or more comprehensive than the territorial statute now under consideration.

There is a dearth of federal judicial authority on the question before us, due no doubt to the fact that the federal Government has uniformly acquiesced in the position here assumed by the taxpayers and which we deem to be the only fair and practicable method of ascertaining losses of the nature involved. It is a notorious fact that during the last decade all stocks and bonds throughout the world have violently fluctuated with the greatest frequency, often changing in value from time to time with kaleidoscopic rapidity. This fact alone would render it impossible to determine the actual time at which the losses were sustained by the taxpayers, if the method of ascertaining those losses proposed by counsel for the assessor were adopted, and would deprive the taxpayers of the benefit of deductions from gross income caused by losses which it is conceded they actually sustained. [45]

All that has been said respecting the losses suffered by the taxpayers on the Sugar Factors Company stock applies with equal force to their losses in respect to the various railroad, industrial, mu-

municipal and United States bonds, and sold as aforesaid in 1920.

We therefore hold that the losses sustained by the taxpayers through the sales of stocks and bonds referred to in the third and fourth paragraphs above, realized upon during the year 1920, amounting in the case of the Ewa Plantation Company to \$487,432.11, and in the case of the Hawaiian Sugar Company to \$268,431.78, are deductible as losses in computing the income taxes of said respective companies for the year 1920 under the facts set forth in the submission herein.

#### DEPRECIATION OF LEASEHOLD.

This controversy affects only the Hawaiian Sugar Company. It appears in the submission that the company's plantation is situated entirely upon leasehold lands which are covered by a single lease. The lease was executed for a term of fifty years from January 1, 1889. The lease as originally executed by Gay & Robinson as lessors was made to one W. R. Watson as lessee, who in the same year assigned the same to the Hawaiian Sugar Company for the consideration of \$50,000. It appears that the leasehold interests were carried on the books of the company at that figure, less an annual amount written off for depreciation, until 1899 when a reappraisal was made of the property of the company and the value of the leasehold was fixed at \$300,000. This leasehold was from that date carried on the books of the company until 1902 when \$8,333 was written off for depreciation, leaving a balance of \$291,667, and thereafter the sum of

\$8,101.86 was written off each year until 1920, this being the amount which if [46] written off each year from 1902 would amortize the said sum of \$291,667 at the time of the expiration of the lease, to wit, December 31, 1938. During this entire period and until the passage of Act 157, S. L. 1917, which became effective April 27, 1917, depreciation or exhaustion was not an allowable deduction under the laws of the Territory and no item for depreciation or exhaustion was claimed by the company in respect to said leasehold until it filed its tax return for the year 1917 when it claimed and was allowed among other items the sum of \$8,101.86 as depreciation of said leasehold. Deductions of a like amount were also claimed and allowed for each of the two succeeding years, to wit, 1918 and 1919. In the year 1919 the company for federal income tax purposes reappraised and revalued the leasehold in question fixing the amount of the value thereof as of March 1, 1913 (the effective date of the federal statute), at the sum of \$2,069,134.58, in addition to the balance which it estimated would remain on the purchase price of \$50,000 of said leasehold after deducting therefrom as depreciation at the rate of \$1001.64 every year for the then unexpired portion of the term of said leasehold, the latter being then estimated as the proper amount to write off from such purchase price in order to amortize its entire amount by the date of the expiration of the lease. The company in order to amortize said value of the leasehold as of March 1, 1913, by the date of the expiration thereof, and in making its

return for the year 1920, deducted therefrom on account of the depreciation or exhaustion of said lease upon the value thereof fixed by it as aforesaid the sum of \$81,093.30, and the question now presented is whether under the facts stated and the statutes of the Territory this item is properly deductible. That part of Act 157, S. L. 1917, which is material here is as follows: "In computing income the necessary expenses actually incurred in carrying on any business, trade, profession or occupation, or in managing any property, shall be deducted, and also all interest paid by [47] such person or corporation on existing indebtedness. And all Government taxes, and license fees, paid within the taxation period next preceding shall be deducted from the gains, profits or income of the person who, or the corporation which, has actually paid the same, whether such person or corporation be owner, tenant or mortgagor; also all losses actually sustained during the taxation period next preceding incurred in trade, or arising from losses by fire not covered by insurance, or losses otherwise actually incurred, and including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in a business or trade; provided, however, that in no case shall such depreciation exceed the amount actually shown by and as written off the books."

The deduction clause of the foregoing local statute is copied from the federal Income Tax Act of 1916. The controversy presents two main questions. The first is whether depreciation or exhaustion of a lease

is an allowable deduction under the income tax laws of Hawaii, and if this question is answered in the affirmative then the second question arises, to wit, how should the amount of such depreciation or exhaustion be determined.

It is urged by counsel for the Territory that there can be no such thing as either exhaustion, wear or tear of intangible property; that these terms refer solely to physical property and can in no case be held to apply to leasehold interests. We agree with counsel that, taken in their usual and ordinary sense, the words "wear and tear" could not be applied to a leasehold, but we are not ready to agree that there cannot be an exhaustion of a leasehold. It seems to us that a leasehold for a term of years is gradually being exhausted as the term or life thereof is shortened by the efflux of time.

It is further urged by counsel for the Territory that even if a leasehold may be exhausted the exhaustion under the [48] statute must arise out of the use or employment of the property in the business or trade; that the passing away of the lease by the efflux of time did not arise out of its use or employment in the plantation business of the company and was not caused by any such use or employment; that by the very nature of things the exhaustion of the lease was bound to occur irrespective of whether or not the lands covered by the demise or the lease itself were used or employed in the business; that the lands might lie idle during the whole tenure of the lease yet the passing of

the term would be going on in spite of the nonusage. It must be conceded that this is an argument of much plausibility and in the interpretation of the statute in this respect a question of much difficulty is encountered. If we were to indulge in the refinements of the lexicographer or of the strict grammarian we would perhaps be led to an adoption of the views of counsel for the Territory. On the other hand, if in reading the statute we interpret its phraseology in the natural and obvious sense in which that phraseology was employed and without too much regard to form (see *Eisner vs. Macomber*, 252 U. S. 189, 206) we must conclude that it was the intent and purpose of the legislature to permit the taxpayer in computing his income to deduct therefrom actual losses incurred during the taxation period due to the exhaustion of all intangible property arising out of its use or employment in his trade or business, including any loss by reason of the exhaustion of a leasehold by efflux of time if such leasehold was actually employed in the trade or business. This is in line with the construction placed upon the federal Income Tax Act of 1916 by the treasury department of the National Government under a statute containing language identical to our own.

Having determined that the loss sustained by reason of the exhaustion by efflux of time of the lease in question is under [49] the fact and circumstances of the case at bar properly deductible from gross income the method to be employed in ascertaining the amount of such deduction will next

be inquired into. Counsel for the taxpayer take the position that because in the year 1919 the company appraised the leasehold as of March 1, 1913, at a valuation of \$2,069,134.58 and because it is stipulated in the submission that the value of the leasehold was as great on January 1, 1917, as on March 1, 1913, the valuation thus fixed should control and be taken as the proper valuation thereof throughout the life of the lease. It does not follow at all that because the company appraised the leasehold at the value above stated as of March 1, 1913, the true value thereof at that or any subsequent time was ascertained nor could any such appraisement be binding upon the assessor or upon this Court for the actual value and not the value arbitrarily fixed should determine the amount to be cared for by depreciation. (Black on Income Tax, 4th ed., sec. 187.) It would be useful to know the valuation placed upon the leasehold by the company for the purpose of fixing the property tax to be paid thereon to the Territory. This record of course is available and would, if it indicates that the leasehold was returned by the taxpayer at the valuation of \$2,069,134.58, be persuasive evidence of the correctness of that valuation. On the other hand, if the valuation was fixed at a less amount it would tend to refute the claim now made by the company and would indicate an inconsistency which cannot be sanctioned for of course the taxpayer will not be allowed to use one valuation for deduction purposes under the income tax law and another valuation for the purpose of fixing the amount of

property tax. We are, however, strongly inclined to assume that the property tax upon the leasehold has been paid on the valuation of \$300,000 placed thereon in 1899 less of course a reasonable amount for depreciation. This assumption is based upon the fact that it is shown by the record that the valuation of \$300,000 was employed [50] by the taxpayer and assessor in arriving at the proper amount of deduction to be allowed as an offset against gross income for the years 1917, 1918 and 1919.

The proper course would have been for the parties, following the 31st day of December, 1917, to reappraise the leasehold at its then true value and based thereon to fix a proper amount to be allowed for exhaustion of the leasehold occurring between the effective date of the act and the end of the taxation period, to wit, April 27, 1917, to December 31, 1917, this course to be repeated thereafter at the end of each succeeding taxation period until the termination of the lease, for a lessee should be allowed a deduction to provide for the amortization of his capital investment on the property measured by the value of the life of the lease. The life of the lease is definitely fixed but the capital investment will vary as the value of the leasehold due to economic causes changes and it follows that the amount required to amortize the capital investment will also change from time to time. But this course the parties did not pursue either in 1917 or in the two following years but instead they merely acquiesced in the value fixed in 1899 and accepted

the sum of \$8,101.86 for each of said years as a proper amount to be written off on account of the exhaustion of the leasehold.

We are only concerned with the value of the leasehold and the amount of depreciation for the year 1920 but we have nothing in the record before us from which that value or the amount to be allowed for exhaustion covering that year can be determined. Each taxation period should be dealt with separately and independently from every other taxation period. The value of property and the amount of income for each period should be determined annually. To say that the value of taxable assets either for property tax or income tax purposes should for all time remain the same as that [51] value happened to be at the date the statute levying the tax became effective is to assert a proposition palpably unsound, untenable and grossly unfair to both the taxpayer and to the government. Property values shift from year to year and these changes should be taken into account in determining the amount of taxes to be required of each taxpayer annually. The value of the leasehold in question as one of the capital assets of the Hawaiian Sugar Company has varied in the past and will vary in the future as the price of sugar advances, at least so long as the leasehold interests are devoted to the production of sugar.

The mere stating of this well-known economic fact sets the error of the contention of counsel for the taxpayer in a strong light. The decision in *Doyle vs. Mitchell*, 247 U. S. 179, is cited as a

judicial recognition and approval of the principle that the value of the leasehold should be taken as on the effective date of the act. With that principle we agree but we do not concede, nor is it held in *Doyle vs. Mitchell* that the value thus determined shall during all subsequent years remain the same and become the criteria for the purpose of arriving at the amount of exhaustion or diminution of capital for income tax purposes. In the case just cited the question arose under the federal excise tax of 1909 and turned upon the proposition that Congress did not intend by the use of the term "income" to include the proceeds of capital assets sold or converted during the year. The company had bought certain stumpage in 1903 at \$20 per acre and on December 31, 1908, the actual value had increased to \$40 per acre. Under the act the company made a return for each year 1909, 1910, 1911 and 1912, and in each instance deducted from its gross receipts the market value (\$40 per acre) as of December 31, 1908, of the stumpage cut and converted during the year covered by the tax. The commissioner of internal revenue refused to allow the difference [52] between the cost of the stumpage, that is, \$20 per acre, and the market value thereof, to wit, \$40 per acre. The Court in its opinion sustained the taxpayer but pointed out that there was "no change in market values during these years." But had there been a change in the market value of the stumpage during the years following December 31, 1908, would the result have been the same? We think not. Nor is the decision in *Merchants Loan & Trust Co. vs. Smietanka*,

*supra*, and the three companion cases decided by the Supreme Court of the United States on March 28, 1921, any authority for the contention of counsel for the taxpayer. These opinions merely hold that where property is of a certain value at the effective date of the taxing act and is thereafter sold at an advanced price the profits thus realized by the seller is income under the federal statute.

We therefore hold that the actual amount of depreciation in the value of the leasehold should be allowed as a deduction in computing the income tax of the Hawaiian Sugar Company for the year 1920 under the laws of the Territory of Hawaii, but because the value of the leasehold at the end of the year 1920 has not been properly ascertained and is unascertainable from the record before us we are not able to fix the amount.

A separate judgment will be entered in each of the proceedings conformably to the views expressed in this opinion.

A. G. M. ROBERTSON, W. L. STANLEY, U. E. WILD, H. HOLMES and W. F. FREAR (ROBERTSON, CASTLE & OLSON; FREAR, PROSSER, ANDERSON & MARX; SMITH, WARREN, STANLEY & VITOUSEK and H. HOLMES on the Brief), for the Taxpayers.

A. PERRY (H. IRWIN, Attorney General, and PERRY & MATTHEWMAN on the Brief), for the Tax Assessor.

JAMES L. COKE.

S. B. KEMP.

W. S. EDINGS.

[Endorsed]: Nos. 1327 and 1328. Supreme Court, Territory of Hawaii. October Term, 1921. *Ewa Plantation Company vs. Charles T. Wilder, Tax Assessor First Taxation Division, Territory of Hawaii. Hawaiian Sugar Company vs. Charles T. Wilder, Tax Assessor First Taxation Division, Territory of Hawaii. Opinion. Filed February 28, 1922, at 11:45 A. M. (Sig.) J. A. Thompson, Clerk.* [53]

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In the Supreme Court of the Territory of Hawaii.  
October Term, 1921.

ORIGINAL—No. 1327.

EWA PLANTATION COMPANY

vs.

CHARLES T. WILDER, Tax Assessor for the  
First Taxation Division, Territory of Hawaii.

Judgment.

SUBMISSION WITHOUT ACTION.

This cause having been instituted in this Court upon a submission, joined in by both parties, upon a statement of agreed facts, in conformity with the provisions of the statute relating to such cases, and all parties having been duly heard in argument, it is by this Court **CONSIDERED AND ADJUDGED:**

I.

Referring to item (19) of Schedule "A" of the Income Tax Return filed by the plaintiff with the defendant on February 28, 1921, relating to the

plaintiff's income for the year 1920, which item is in said return designated "Strike Claim Settlement,"—that the said item, returned by the plaintiff at \$2,324,931.75 be and it hereby is increased to \$2,791,697.72; and that the amount of income taxable payable with reference to the said item be and it hereby is increased by the sum of \$18,670.60 over the amount shown by the plaintiff's said return. [54]

## II.

Referring to the deduction claimed in Schedule "B" of said Tax Return by this plaintiff, namely, item "(2) Interest on Mainland and Foreign Investments," that the said deduction be and it hereby is disallowed; and that the amount of income taxes payable by the plaintiff with reference to the said item be and it hereby is increased by the sum of \$2,097.68 over the amount shown by the plaintiff's said return.

## III.

Referring to the deduction claimed in Schedule "B" of said Tax Return by this plaintiff, namely, Item "15-(c) Loss on Sale of Sugar Factors Stock," that the said deduction be and it hereby is allowed; and that in this respect the plaintiff's said return stand as made.

## IV.

Referring to the deduction claimed in Schedule "B" of said Tax Return by this plaintiff, namely, Item "15-(d) Loss on Sale of Miscellaneous Bonds," that the said deduction be and it hereby is

allowed; and that in this respect the plaintiff's said return stand as made.

V.

THEREFORE, IT IS CONSIDERED AND ADJUDGED that the said Charles T. Wilder, Tax Assessor for the First Taxation Division, Territory of Hawaii, do recover from the said Ewa Plantation Company the sum of Twenty Thousand Seven Hundred and Sixty-eight and 28/100 (\$20,768.28) Dollars.

Dated Honolulu, T. H., April 7, 1922.

By the Court.

[Seal]

J. A. THOMPSON,

Clerk of the Above-entitled Court. [55]

[Endorsed]: No. 1327. In the Supreme Court of the Territory of Hawaii. Ewa Plantation Co., Ltd., vs. Charles T. Wilder, Tax Assessor. Submission on Case Agreed. Judgment. Filed April 7, 1922, at 11:05 A. M. J. A. Thompson, Clerk. [56]

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In the Supreme Court of the Territory of Hawaii.

ORIGINAL—No. 1327.

EWA PLANTATION COMPANY,

Plaintiff in Error,

vs.

CHARLES T. WILDER, Tax Assessor for the  
First Taxation Division, Territory of  
Hawaii,

Defendant in Error.

**Petition for Writ of Error for the United States  
Circuit Court of Appeals for the Ninth Circuit  
to the Supreme Court of the Territory of  
Hawaii.**

**SUBMISSION WITHOUT ACTION.**

To the Honorable Chief Justice and Associate  
Justices of the Supreme Court of the Territory  
of Hawaii:

Ewa Plantation Company, petitioner in the above-entitled cause, feeling itself aggrieved by the decision and judgment in said cause, which judgment was entered by the Supreme Court of the Territory of Hawaii on the 7th day of April, A. D. 1922, and complaining says that there are manifest errors to the damage of the petitioner in the same, which errors are specifically set forth in assignments of error filed herein, to which reference is hereby made; that the amount involved in said suit, exclusive of costs, exceeds the sum or value of Five Thousand Dollars (\$5000) and that it is a proper case to be reviewed by said Circuit Court of Appeals.

AND WHEREFORE your petitioner would respectfully pray that a writ of error be allowed to it in the above cause and that it be allowed to prosecute the same to the Honorable United States Circuit Court of Appeals for the Ninth Circuit under and [57] according to the laws of the United States in that behalf made and provided; that an order be made fixing the amount of security the petitioner shall give and furnish upon said writ of error; that the Clerk of the Supreme Court of

the Territory of Hawaii be directed to send to the United States Circuit Court of Appeals for the Ninth Circuit a transcript of the record, proceedings and papers in this case duly authenticated for the correction and the errors so complained of and that a citation may issue.

And your petitioner will ever pray.

Dated, Honolulu, T. H., April 29th, 1922.

EWA PLANTATION COMPANY,

[Seal]

By E. D. TENNEY,

Its President.

By CHAS. H. ATHERTON,

Its Treasurer.

ROBERTSON & CASTLE,

Attorneys for Petitioner.

Subscribed and sworn to before me this 29 day of April, 1922.

[Seal]

CHAS. Y. AWANA,

Notary Public, First Judicial Circuit, Territory of Hawaii.

The foregoing petition is granted, a writ of error allowed and the amount of bond on said writ of error is fixed at \$500.

Dated, April 29, 1922.

[Seal]

E. C. PETERS,

Chief Justice. [58]

[Endorsed]: No. 1327. In the Supreme Court of the Territory of Hawaii. Ewa Plantation Company, Plaintiff in Error, vs. Charles T. Wilder, Tax Assessor for the First Taxation Division Territory of Hawaii. Defendant in Error. Petition for

Writ of Error for the United States Circuit Court of Appeals for the Ninth Circuit to the Supreme Court of the Territory of Hawaii. Filed April 29, 1922, at 9:35 A. M. J. A. Thompson, Clerk [59]

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In the Supreme Court of the Territory of Hawaii.

ORIGINAL—No. 1327.

EWA PLANTATION COMPANY,

Plaintiff in Error,

vs.

CHARLES T. WILDER, Tax Assessor for the  
First Taxation Division, Territory of  
Hawaii,

Defendant in Error.

**Assignment of Errors.**

**SUBMISSION WITHOUT ACTION.**

Comes now Ewa Plantation Company, plaintiff in error in the above-entitled cause, and says there is manifest error in the record of proceedings in said cause in the Supreme Court of the Territory of Hawaii in this, to wit:

1. That said Supreme Court erred in holding that the entire sum of \$2,791,697.72 received by Ewa Plantation Company from the Hawaiian Sugar Planters' Association in 1920, by way of compensation for losses incurred by reason of the laborers' strike on the Island of Oahu, should be accounted for by said company as taxable income received during the year 1920.

2. That said Supreme Court erred in not holding that said sum of \$2,791,697.72 should be apportioned and the respective parts thereof so apportioned taken into account for income taxation purposes when and as the crops to which such parts respectively appertained, viz., the crops of 1920, 1921 and 1922, shall have been sold and the net results ascertained with reference to each of said crops. [60]

3. That said Supreme Court erred in holding that the doctrine of the maxim *mobilia sequuntur personam* has not been repudiated by judicial precedent in Hawaii with reference to taxation.

4. That said Supreme Court erred in not holding that even if said doctrine has not been so repudiated it should not be applied in this case under the circumstances set forth in paragraph 4 of the submission herein.

5. That said Supreme Court erred in holding that the case of Maguire vs. Trefry, 253 U. S. 12, is a controlling authority in the case at bar.

6. That said Supreme Court erred in holding that the sum of \$52,442.23 received by Ewa Plantation Company during the year 1920 as interest upon foreign investments, i. e., interest on the bonds and notes of mainland railroad and industrial corporations and upon deposits in mainland banks, was not legally deductible in ascertaining the taxable income of said company in its tax return for 1921.

7. That said Supreme Court erred in holding that said sum of \$52,442.23 constituted taxable income of said company.

8. That said Supreme Court erred in adjudging that the second sub-item under Item (19) of Schedule "A" of the income tax return of Ewa Plantation Company filed in February 28, 1921, relating to the income of said company for the year 1920 returned at \$2,324,931.75 should be increased to \$2,791,697.72, and that the income taxes payable with reference to the said item be increased by the sum of \$18,670.60 over the amount [61] shown by said company's said return.

9. That said Supreme Court erred in adjudging that the deduction claimed in Schedule "B" of the said income tax return of Ewa Plantation Company, viz., Item "(2) Interest on Mainland and Foreign Investments," should be disallowed and that the income taxes payable by said company with reference to the said item be increased by the sum of \$2,097.68 over the amount shown by said company's said return.

10. That said Supreme Court erred in rendering and entering judgment in favor of Charles T. Wilder, Tax Assessor for the First Taxation Division, Territory of Hawaii, to recover from Ewa Plantation Company the sum of \$20,768.28.

Dated at Honolulu, T. H., April 29, 1922.

ROBERTSON & CASTLE,  
Attorneys for Plaintiff in Error. [62]

[Endorsed]: No. 1327, Supreme Court, Territory of Hawaii, Ewa Plantation Company, Plaintiff in Error, vs. Charles T. Wilder, Tax Assessor, etc., Defendant in Error. Assignment of Errors.

Filed April 29, 1922, at 9:35 A. M. J. A. Thompson, Clerk. [63]

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In the Supreme Court of the Territory of Hawaii.  
ORIGINAL—No. 1327.

EWA PLANTATION COMPANY,  
Plaintiff in Error,  
vs.

CHARLES T. WILDER, Tax Assessor for the  
First Taxation Division, Territory of  
Hawaii,  
Defendant in Error.

**Bond on Writ of Error.**

**SUBMISSION WITHOUT ACTION.**

KNOW ALL MEN BY THESE PRESENTS:  
That Ewa Plantation Company, as principal, and  
Albert N. Campbell, as surety, are held and firmly  
bound unto Charles T. Wilder in the penal sum of  
Five Hundred (\$500) Dollars, for the payment of  
which well and truly to be made, we do hereby,  
jointly and severally firmly bind ourselves and  
our respective heirs, successors, executors and ad-  
ministrators.

THE CONDITION OF THIS OBLIGATION  
IS SUCH, that

WHEREAS, in an action heretofore pending in  
and before the Supreme Court of the Territory of  
Hawaii, wherein said bounden principal was one  
party and the obligee was the other party to a sub-  
mission without action, this said Supreme Court  
did, on the 7th day of April, 1922, render and enter

a judgment of said Supreme Court, wherein and whereby certain deductions from taxes were disallowed to the principal of this bond, and which judgment was in favor of the defendant in error, and

WHEREAS, said bounden principal has appealed from said judgment of the Supreme Court of the Territory of Hawaii to the [64] United States Circuit Court of Appeals for the Ninth Circuit, to the end that said decree of the Supreme Court of the Territory of Hawaii may be reviewed by said Circuit Court of Appeals of the Ninth Circuit, and has taken, or is about to take, such other and further proceedings as may be necessary to obtain a review by said United States Circuit Court of Appeals for the Ninth Circuit of the judgment of the said Supreme Court of the Territory of Hawaii.

NOW, THEREFORE, if the said bounden principal shall prosecute said appeal to final conclusion and effect, and shall answer all damages and costs if it fails to make its plea good, then the above obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, said principal and surety have hereunto set their hands and seals this 29th day of April, A. D. 1922.

EWA PLANTATION COMPANY,

By E. D. TENNEY, (Seal)

Its President.

By CHAS. H. ATHERTON,

Its Treasurer, Principal.

A. N. CAMPBELL,

Surety.

The foregoing bond is approved as to its form, as to its amount, and as to the sufficiency of its surety, this 29th day of April, A. D. 1922.

[Seal] E. C. PETERS,  
Chief Justice of the Supreme Court of the Territory of Hawaii. [65]

[Endorsed]: No. 1327. In the Supreme Court of the Territory of Hawaii. Ewa Plantation Company, Plaintiff in Error, vs. Charles T. Wilder, Tax Assessor for the First Taxation Division Territory of Hawaii. Defendant in Error. Bond on Writ of Error. Filed April 29, 1922, at 9:35 A. M. J. A. Thompson, Clerk. [66]

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In the Supreme Court of the Territory of Hawaii.  
ORIGINAL—No. 1327.

EWA PLANTATION COMPANY,  
Plaintiff in Error,  
vs.

CHARLES T. WILDER, Tax Assessor for the  
First Taxation Division, Territory of  
Hawaii,  
Defendant in Error.

**Writ of Error.**

**SUBMISSION WITHOUT ACTION.**

United States of America—ss.

The President of the United States of America to  
the Honorable, the Judges of the Supreme  
Court of the Territory of Hawaii, GREETING:  
Because in the record and in the proceedings, as

also in the rendition of the judgment in said Supreme Court of the Territory of Hawaii before you, in the case of "Ewa Plantation Company vs. Charles T. Wilder, Tax Assessor for the First Taxation Division, Territory of Hawaii, Submission Without Action, Original No. 1327," a manifest error has happened to the great prejudice and damage of Ewa Plantation Company, petitioner, as is said and appears by the petition herein,—

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Justices of the United States Circuit Court of [67] Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, together with this writ, so as to have the same at the said place in said Circuit Court thirty days after this date, and the record and proceedings aforesaid being inspected by the said Circuit Court of Appeals, may cause further to be done therein, to correct those errors what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 29th day of April, A. D. 1922.

ATTEST my hand and seal of the Supreme Court of the Territory of Hawaii, at the clerk's

office, Honolulu, Territory of Hawaii, on the day and year last above written.

[Seal] J. A. THOMPSON,  
Clerk of Supreme Court, Territory of Hawaii.

Allowed this 29th day of April, A. D. 1922.

[Seal] E. C. PETERS,  
Chief Justice of Supreme Court, Territory of  
Hawaii. [68]

[Endorsed]: No. 1327. In the Supreme Court of the Territory of Hawaii. Ewa Plantation Company, Plaintiff in Error, vs. Charles T. Wilder, Tax Assessor, for the First Taxation Division Territory of Hawaii, Defendant in Error. Writ of Error. Filed April 29, 1922, at 9:35 A. M. J. A. Thompson, Clerk. [69]

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In the Supreme Court of the Territory of Hawaii.  
ORIGINAL—No. 1327.

EWA PLANTATION COMPANY,  
Plaintiff in Error,  
vs.

CHARLES T. WILDER, Tax Assessor for the  
First Taxation Division, Territory of  
Hawaii.

Defendant in Error.

Citation on Writ of Error.

SUBMISSION WITHOUT ACTION.

United States of America—ss.

The President of the United States of America to  
CHARLES T. WILDER, GREETING:

You are hereby cited and admonished to be and

appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the Territory of Hawaii, wherein Ewa Plantation Company, is plaintiff in error and you are defendant in error, to show cause, if any there may be, why judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States of America, this 29th day of April, A. D. 1922.

Dated, Honolulu, April 29th, 1922.

[Seal]

E. C. PETERS,

Chief Justice of the Supreme Court, Territory of Hawaii. [70]

Due service of the foregoing citation and receipt of a true copy thereof, this 29th day of April, 1922, is hereby admitted.

CHARLES T. WILDER,

Tax Assessor for the First Taxation Division,  
Territory of Hawaii,

By J. LIGHTFOOT,

Deputy Attorney General. [71]

[Endorsed]: No. 1327. In the Supreme Court of the Territory of Hawaii. Ewa Plantation Company, Plaintiff in Error. vs. Charles T. Wilder,

Tax Assessor for the First Taxation Division, Territory of Hawaii, Defendant in Error, Citation on Writ of Error. Filed April 29, 1922, at 9:35 A. M., and Issued for Service. J. A. Thompson, Clerk. Returned April 29, 1922, at 10:05 A. M. J. A. Thompson, Clerk. [72]

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In the Supreme Court of the Territory of Hawaii.

ORIGINAL—No. 1327.

EWA PLANTATION COMPANY,

Plaintiff in Error,

vs.

CHARLES T. WILDER, Tax Assessor for the  
First Taxation Division, Territory of Hawaii,  
Defendant in Error.

**Praecipe for Transcript of Record on Writ of Error.**

**SUBMISSION WITHOUT ACTION.**

To James A. Thompson, Esq., Clerk, Supreme Court, Territory of Hawaii:

You will please prepare a transcript of record in the above-entitled cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and include in said transcript the following pleading, opinion, judgment and papers on file in said cause, to wit:

1. Statement of agreed facts and submission, filed April 29, 1921.
2. Opinion of the Supreme Court of the Territory of Hawaii, filed February 28, 1922.
3. Judgment, entered April 7, 1922.

You will please annex to and transmit with the record such further papers as, according to the practice of the court, should be annexed and transmitted.

Dated Honolulu, T. H., April 29, 1922.

ROBERTSON & CASTLE,  
Attorneys for Plaintiff in Error. [73]

[Endorsed]: No. 1327. In the Supreme Court of the Territory of Hawaii. Ewa Plantation Company, Plaintiff in Error, vs. Charles T. Wilder, Tax Assessor for the First Taxation Division, Territory of Hawaii, Defendant in Error. Praecipe for Transcript of Record on Writ of Error. Filed April 29, 1922, at 9:35 A. M. J. A. Thompson, Clerk. [74]

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In the Supreme Court of the Territory of Hawaii.  
ORIGINAL—No. 1327.

EWA PLANTATION COMPANY,  
Plaintiff in Error,  
vs.

CHARLES T. WILDER, Tax Assessor for the  
First Taxation Division, Territory of Hawaii,  
Defendant in Error.

**Amended Assignment of Errors.**  
**SUBMISSION WITHOUT ACTION.**

Comes now Ewa Plantation Company, plaintiff in error in the above-entitled cause, and says there is manifest error in the record of proceedings in said cause in the Supreme Court of the Territory of Hawaii in this, to wit:

1. That said Supreme Court erred in holding that the entire sum of \$2,791,697.72 received by Ewa Plantation Company from the Hawaiian Sugar Planters' Association in 1920, by way of compensation for losses incurred by reason of the laborers' strike on the Island of Oahu, should be accounted for by said company as taxable income received during the year 1920.

2. That said Supreme Court erred in not holding that said sum of \$2,791,697.72 should be apportioned and the respective parts thereof so apportioned taken into account for income taxation purposes when and as the crops to which such parts respectively appertained, viz., the crops of 1920, 1921 and 1922, shall have been sold and the net results ascertained with reference to each of said crops. [75]

3. That said Supreme Court erred in holding that the doctrine of the maxim *mobilia sequuntur personam* has not been repudiated by judicial precedent in Hawaii with reference to taxation.

4. That said Supreme Court erred in not holding that even if said doctrine has not been so repudiated it should not be applied in this case under the circumstances set forth in paragraph 4 of the submission herein.

5. That said Supreme Court erred in holding that the case of Maguire vs. Trefry, 253 U. S. 12, is a controlling authority in the case at bar.

6. That said Supreme Court erred in holding that the sum of \$52,442.23 received by Ewa Plantation Company during the year 1920 as interest upon foreign investments, i. e., interest on the bonds

and notes of mainland railroad and industrial corporations and upon deposits in mainland banks, was not legally deductible in ascertaining the taxable income of said company in its tax return for 1921.

7. That said Supreme Court erred in holding that said sum of \$52,442.23 constituted taxable income of said company.

8. That said Supreme Court erred in adjudging that the second sub-item under Item (19) of Schedule "A" of the income tax return of Ewa Plantation Company filed on February 28, 1921, relating to the income of said company for the year 1920 returned at \$2,324,931.75 should be increased to \$2,791,697.72 and that the income taxes payable with reference to the said item be increased by the sum of \$18,670.60 over the amount shown [76] by said company's said return.

9. That said Supreme Court erred in adjudging that the deduction claimed in Schedule "B" of the said income tax return of Ewa Plantation Company, viz., Item "(2) Interest on Mainland and Foreign Investments," should be disallowed and that the income taxes payable by said company with reference to the said item be increased by the sum of \$2,097.68 over the amount shown by said company's said return.

10. That said Supreme Court erred in rendering and entering judgment in favor of Charles T. Wilder, Tax Assessor for the First Taxation Division, Territory of Hawaii, to recover from Ewa Plantation Company the sum of \$20,768.28.

WHEREFORE the said plaintiff in error prays that the judgment of the Supreme Court of the Territory of Hawaii be vacated and set aside; that the said Court be ordered to correct the errors aforesaid, and to enter judgment in favor of said Ewa Plantation Company.

Dated, Honolulu, T. H., the 3d day of May, 1922.

ROBERTSON & CASTLE,  
Attorneys for Plaintiff in Error.

Receipt of a copy of the foregoing amended assignment of errors admitted this 3d day of May, 1922.

J. LIGHTFOOT,  
Acting Attorney General, Territory of Hawaii, Attorney for Defendant in Error. [77]

[Endorsed]: No. 1327. Supreme Court, Territory of Hawaii. Ewa Plantation Company, Plaintiff in Error, vs. Charles T. Wilder, Tax Assessor for the First Taxation Division, Territory of Hawaii, Defendants in Error. Assignment of Error. Filed May 3, 1922, at 3:35 P. M. J. A. Thompson, Clerk. [78]

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In the Supreme Court of the Territory of Hawaii.  
ORIGINAL—No. 1327.

EWA PLANTATION COMPANY,  
Plaintiff in Error,  
vs.

CHARLES T. WILDER, Tax Assessor for the  
First Taxation Division, Territory of Hawaii,  
Defendant in Error.

**Amended Praeipe for Transcript of Record on  
Writ of Error.**

**SUBMISSION WITHOUT ACTION.**

To James A. Thompson, Esq., Clerk, Supreme  
Court, Territory of Hawaii:

You will please prepare a transcript of record in  
the above-entitled cause to be filed in the office of  
the clerk of the United States Circuit Court of  
Appeals for the Ninth Circuit, and include in said  
transcript the following pleading, opinion, judg-  
ment and papers on file in said cause, to wit:

1. Statement of agreed facts and submission, filed  
April 29, 1921;
2. Opinion of the Supreme Court of the Territory  
of Hawaii, filed February 28, 1922;
3. Judgment, entered April 7, 1922.

You will please annex to and transmit with the  
record such further papers, as, according to the  
practice of the court, should be annexed and trans-  
mitted, including the amended assignment of errors.

Dated, Honolulu, T. H., May 10, 1922.

ROBERTSON & CASTLE,  
Attorneys for Plaintiff in Error. [79]

[Endorsed]: No. 1327. Supreme Court, Terri-  
tory of Hawaii. Ewa Plantation Company, Plain-  
tiff in Error, vs. Charles T. Wilder, Tax Assessor  
for the First Taxation Division, Territory of Ha-  
waii. Amended Praeipe for Transcript of Record  
on Writ of Error. Filed May 11, 1922, at 9:40 A.  
M. J. A. Thompson, Clerk. [80]

In the Supreme Court of the Territory of Hawaii.  
October Term, 1921.

EWA PLANTATION COMPANY,  
Plaintiff in Error,  
vs.

CHARLES T. WILDER, Tax Assessor for the  
First Taxation Division, Territory of Hawaii,  
Defendant in Error.

**Certificate of the Clerk of the Supreme Court of  
the Territory of Hawaii and Return to Writ  
of Error.**

**SUBMISSION WITHOUT ACTION.**

Territory of Hawaii,  
City and County of Honolulu,  
United States of America,—ss.

I, James A. Thompson, Clerk of the Supreme Court of the Territory of Hawaii, in obedience to the within writ of error, the original whereof is herewith returned, being pages 67 to 69, both inclusive of the foregoing transcript, and in pursuance of the praecipe, being pages 73 to 74, both inclusive, and the amended praecipe, being pages 79 to 80, both inclusive, to me directed, DO HEREBY TRANSMIT to the Honorable United States Circuit Court of Appeals for the Ninth Circuit the foregoing transcript of record, being pages 1 to 59, both inclusive, and pages 64 to 66, both inclusive, AND I CERTIFY the same to be full, true and correct copies of the pleadings, record, entries

and final judgment which are now on file and of record in the office of the Clerk of the Supreme Court of the Territory of Hawaii, in the case entitled in said court "Ewa Plantation Company, Plaintiff in Error, *versus* Charles T. Wilder, Tax Assessor for the First Taxation Division, Territory of Hawaii, Defendant in Error," and numbered 1327.

I DO FURTHER CERTIFY that the original citation on writ of error, with acknowledgment of receipt of a copy thereof by J. Lightfoot, [81] Deputy Attorney General, being pages 70 to 72, both inclusive; the original assignment of errors, being pages 60 to 63, both inclusive, and the original amended assignment of errors, being pages 75 to 78, both inclusive, of the foregoing transcript of record are hereto attached and herewith returned.

I LASTLY CERTIFY that the cost of the foregoing transcript of record is \$47.75, and that said amount has been paid by Messrs. Robertson & Castle, the attorneys for the plaintiff in error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Supreme Court of the Territory of Hawaii, at Honolulu, City and County of Honolulu, this 16th day of May, A. D. 1922.

[Seal]

JAMES A. THOMPSON,

Clerk of the Supreme Court of the Territory of Hawaii. [82]

[Endorsed]: No. 3876. United States Circuit Court of Appeals for the Ninth Circuit. Ewa Plantation Company, a Hawaiian Corporation, Plaintiff in Error, vs. Charles T. Wilder, as Tax Assessor for the First Taxation Division, Territory of Hawaii, Defendant in Error. Transcript of Record. Upon Writ of Error to the Supreme Court of the Territory of Hawaii.

Filed May 23, 1922.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.